

***United States Court of Appeals  
for the Second Circuit***



**BRIEF FOR  
APPELLANT**



**74-1550**

**ORIGINAL**

*To be argued by*  
**HERBERT S. SIEGAL**

*3*  
*PLS.*

In The  
**United States Court of Appeals**

For The Second Circuit

UNITED STATES OF AMERICA,

*Appellee,*

vs.

CARMINE TRAMUNTI,

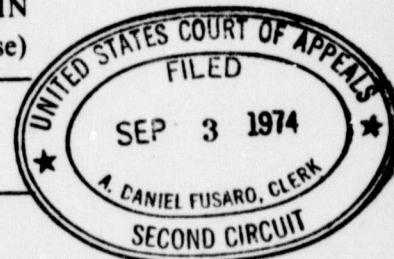
*Appellant,*

*and*

LOUIS INGLESE, a/k/a "Gigi", JOSEPH DELVECCHIO,  
a/k/a "Joe Crow", DONATO CHRISTIANO, a/k/a  
"Finnegan", THOMAS LENTINI, a/k/a "Moe", ANGELO  
MAMONE, a/k/a "Butch", JOSEPH DINAPOLI, CARMINE  
PUGLIESE, PAT DILACIO, FRANK PUGLIESE, a/k/a  
"Butch", JOSEPH CERIALE, a/k/a "Joe Red", JOHN  
GAMBA, a/k/a "Sinatra", ANTHONY LORIA, VINCENT  
D'AMICO, a/k/a VINCENT RIZZO, DONINICK LESSA,  
BENJAMIN TOLOPKA, GEORGE TOUTOIAN, FRANK  
PELLEGRINO, a/k/a "Swift", JOSEPH MARCHESE,  
a/k/a "Joe Cab", RICHARD FORBRICK, FRANK RUSSO,  
WARREN C. ROBINSON, a/k/a "Alan", THOMAS  
DOWSON, a/k/a "Tennessee", AL GREENE, WILLIAM  
ALONZO, a/k/a BUTCH WARE, HATTIE WARE, JOHN

(Continued on Reverse)

**APPELLANT'S BRIEF**



---

SPRINGER, a/k/a "Hank", MARY JANE SALVIANI, a/k/a  
"Liz", HENRY SALLEY, BASIL HANSEN, ESTELLE,  
HANSEN, and JOHN DOE, a/k/a "Jimmy Wyatt Earp",  
*Defendants.*

*Appeal from the United States District Court for the Southern  
District of New York.*

---

HERBERT S. SIEGAL  
*Attorney for Appellant*  
17 John Street  
New York, New York 10038  
(212) RE2-5330

*Of Counsel:*

GILBERT EPSTEIN  
253 Broadway  
New York, New York 10007

---

(7532)

LUTZ APPELLATE PRINTERS, INC.  
Law and Financial Printing

South River, N. J.  
(201) 257-6850

New York, N. Y.  
(212) 565-6377

Philadelphia, Pa.  
(215) 563-5587

Washington, D. C.  
(202) 783-7288



## TABLE OF CONTENTS

Table of Cases. . . . .	i - ii
Questions Presented . . . . .	1
Statement Pursuant to Rule 28(3)	
Preliminary Statement . . . . .	2
Statement of Facts . . . . .	3
The Trial . . . . .	3

### ARGUMENT

#### POINT I

THE EVIDENCE WAS INSUFFICIENT AS A MATTER OF LAW TO CONVICT THE APPELLANT OF THE CRIME OF CONSPIRACY . . . . .	41
--	----

#### POINT II

THE COURT ERRED IN DENYING THE APPELLANT'S MOTION FOR A SEVERANCE PURSUANT TO RULES 8(b) AND 14 OF THE FEDERAL RULES OF CRIMINAL PROCEDURE . . . . .	49
---	----

#### POINT III

THE COURT ERRED IN FAILING TO CHARGE THE JURY, AS REQUESTED, ON THE KNOWLEDGE OF THE PURPOSE OF THE CONSPIRACY . . . . .	54
--	----

#### POINT IV

THE COURT ERRED IN FAILING TO INSTRUCT THE JURY, AS REQUESTED, THAT A WITNESS' EXPLANA- TION FOR HIS PRIOR INCONSISTENT STATEMENTS IS NOT EVIDENCE OF THE TRUTH CONTAINED THEREIN. . . . .	59
---	----

#### POINT V

THE COURT ERRED IN DENYING APPELLANT'S MOTION TO STRIKE OVERT ACTS FIFTEEN SIXTEEN AND SEVENTEEN FROM THE INDICTMENT . . . . .	63
--	----

#### POINT VI

THE CONDUCT AND SUMMATION OF THE UNITED STATES	
--	--

ATTORNEY DURING THE TRIAL CONSTITUTES PROSECUTORIAL MISCONDUCT WHICH DENIED APPELLANT A FAIR TRIAL . . . . .	66
--	----

POINT VII

PURSUANT TO RULE 28(i) OF THE FEDERAL RULES OF APPELLATE PROCEDURE, APPELLANT TRAMUNTI HEREBY ADOPTS BY REFERENCE THE POINTS AND ARGUMENTS OF THE OTHER APPELLANTS, INsofar AS THEY MAY HAVE APPLICATION TO THE APPELLANT TRAMUNTI . . . . .	70
---	----

Conclusion . . . . .	70
----------------------	----

# TABLE OF CASES

<u>Cramer v United States</u> , 137 F 2d 888 (2d Cir. 1943) . . . . .	63
<u>Drew v United States</u> , 331 F 2d 85 (C.A.D.C. 1964) . . . . .	49
<u>Grunewald v United States</u> , 353 U. S. 391 (1957) . . . . .	66
<u>Hyde v United States</u> , 225 U. S. 347 (1912). . . . .	64
<u>Ingram v United States</u> , 360 U. S. 672 (1959) . . . . .	55
<u>Kotteakos v United States</u> , 328 U. S. 750 (1946) . . . . .	49,50
<u>Krulewitch v United States</u> , 336 U. S. 440 (1949) . . . . .	52
<u>Nash v United States</u> , 229 U. S. 373 (1913) . . . . .	63
<u>Yates v United States</u> , 354 U. S. 298 (1957) . . . . .	63
<u>United States v Annunziato</u> , 293 F 2d 373 (2d Cir.) <u>cert.</u> <u>denied</u> 368 U. S. 919 (1961) . . . . .	51 fn
<u>Berger</u> , 433 F 2d 680 (2d Cir.) <u>cert denied</u> , 401 U. S. 962 (1971). . . . .	60,61
<u>Bivona</u> , 487 F 2d 443 (2d Cir. 1973) . . . . .	69
<u>Borelli</u> , 336 F 2d 376, 385 (2d Cir. 1964) . . . . .	58
<u>Christmann</u> , 298 F 2d 651 (2d Cir. 1962) . . . . .	55
<u>Cirillo</u> , 468 F 2d 1233 (2d Cir.) <u>cert. denied</u> , 410 U. S. 989 (1973) . . . . .	60
<u>Cirillo</u> , (2d Cir. 1974) Slip Ops. 676-796, (May 7th, 1974) . . . . .	46,48
<u>D'Amato</u> , 493 F 2d 359 (2d Cir. 1974). . . . .	51
<u>Driscoll</u> , 449 F 2d 894 (1st Cir. 1971). . . . .	65
<u>Drummond</u> , 481 F 2d 62 (2d Cir. 1973). . . . .	69
<u>Fantuzzi</u> , 463 F 2d 683 (2d Cir. 1972) . . . . .	41,43
<u>Franzese</u> , 392 F 2d 954 (2d Cir.) <u>vacated on</u> <u>other grounds</u> , 394 U.S. 310 (1969). . . . .	59,60

<u>Stanton Freeman</u> , (2d Cir. 1974) Docket No. 74-1238 (Decided June 7, 1974). . . . .	41
<u>Gallishaw</u> , 428 F 2d 760 (2d Cir. 1970). . . . .	55
<u>Geaney</u> , 417 F 2d 1116 (2d Cir. 1969). . . . .	41
<u>Grunberger</u> , 431 F 2d 1062 (2d Cir. 1970). . . . .	69
<u>Kelly</u> , 349 F 2d 720 (2d Cir. 1965). . . . .	49,52
<u>Puco</u> , 436 F 2d 761 (2d Cir. 1971) . . . . .	67
<u>Puco</u> , 476 F 2d 1099 (2d Cir.) <u>cert. denied</u> , 414 U. S. 844 (1974). . . . .	51
<u>Sarno</u> , 456 F 2d 875 (1st Cir. 1972) . . . . .	63,64
<u>Taylor</u> , 464 F 2d 240 (2d Cir. 1972) . . . . .	41
<u>White</u> , 486 F 2d 204 (2d Cir. 1973). . . . .	69
<u>Zapata</u> , (5th Cir. 1974) Docket No. 73-3350, (Decided July 17, 1974) . . . . .	55

### QUESTIONS PRESENTED

1. Whether the evidence was insufficient as a matter of law to convict the Appellant of the crime of conspiracy.

2. Whether the Court erred in denying the Appellant's motion for a severance pursuant to Rules 8(b) and 14 of the Federal Rules of Criminal Procedure.

3. Whether the Court erred in failing to charge the jury, as requested, on the knowledge of the purpose of the conspiracy.

4. Whether the Court erred in failing to instruct the jury, as requested, that a witness' explanation for his prior inconsistent statements is not evidence of the truth contained therein.

5. Whether the Court erred in denying Appellant's motion to strike Overt Acts Fifteen, Sixteen and Seventeen from the Indictment.

6. Whether the conduct and summation of the United States Attorney during the trial constitutes prosecutorial misconduct which denied Appellant a fair trial.

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

---

Docket No. 74-1550

---

UNITED STATES OF AMERICA,

Appellee,

v.

CARMINE TRAMUNTI,

Appellant.

---

On Appeal From the United States District Court  
For the Southern District of New York

---

---

BRIEF FOR THE APPELLANT TRAMUNTI

---

---

STATEMENT PURSUANT TO RULE 28(3)

---

PRELIMINARY STATEMENT

This is an appeal from a judgment of the United States District Court for the Southern District of New York (the Honorable Kevin T. Duffy), rendered on May 7th, 1974, wherein Appellant was convicted, after trial by jury, of one count of conspiring to violate 21 U.S.C. 846. The Appellant was sentenced to the care and custody of the Attorney General for Fifteen (15) years with a special parole term of Three (3) years to commence upon expiration of the term of imprisonment.

## STATEMENT OF FACTS

A thirty-count indictment was filed\* charging the Appellant, Carmine Tramunti, in Count One with conspiring to facilitate the transportation, concealment and sale of a quantity of narcotic drugs after the said narcotic drugs had been unlawfully imported into the United States and with conspiring to distribute Schedule I and II narcotic drug controlled substances. The Appellant was further charged in Count Twenty-Seven with having distributed three (3) kilograms of heroin.

The indictment alleged that from January 1, 1969 to December 6, 1973 the Appellant, in conjunction with the other named defendants and co-conspirators, conspired to facilitate the transportation, concealment and sale of an unlawfully imported narcotic drug and to distribute a Schedule I and II narcotic drug controlled substance. The indictment further alleged that in May, 1973, the Appellant distributed three (3) kilograms of heroin in the Southern District of New York.

## THE TRIAL

### 1. THE PROSECUTION CASE

PRIMROSE CADMAN testified that in late 1968 and 1969 she was using heroin from five to seven times a day, depending on its cost (103)\*\*

---

\* The indictment originally named thirty-two defendants, but only sixteen of the named defendants stood trial until verdict. The defendant Al Greene was severed during the trial because of an injury, three named defendants plead guilty prior to trial, and eleven defendants were severed prior to trial. The defendant Joseph Marchese was acquitted by Order of the Court pursuant to Rule 29 of the Federal Rules of Criminal Procedure at the close of the entire case (4476).

\*\* The numerals in parentheses refer to the pages of the trial transcript, which have been filed in triplicate with the Court.

She admitted that at the time she was stealing women's clothing from various New York City department stores (104). She further admitted that there was an outstanding warrant for her arrest in July, 1969, but on which she had subsequently jumped bail. Although she had been in the United States for a year following her return from England, she had not appeared in State Court to answer to the Grand Larceny charge because the warrants could not be located and, moreover, she has not been charged with bail jumping by State authorities (181-187). She testified that although she expected to go to jail and then be deported, she was not interested in how much jail time she faced (214). The Government, in addition, had been paying her Six Hundred dollars a month since her return to the United States from England in February, 1973 (178, 179).

Cadman testified that in May, 1969 she went to Diane's Bar at 104th Street and Second Avenue and sold stolen women's clothing (104-105). The second time she went to Diane's Bar she said she sold some stolen women's clothing to the defendant Louis Inglese a/k/a Gigi, whom she met for the first time (106). In early June, 1969, Cadman went to Diane's Bar on a Thursday evening and spoke to Inglese about borrowing Twenty dollars to obtain heroin. He agreed upon the condition that she sell her clothes only to him. Inglese asked her if she would take heroin instead of money and she agreed. Inglese then spoke to the defendant Joseph Delvecchio, a/k/a Joe Crow, who went to the back of Diane's Bar from where, she testified, she received a quantity of heroin (110-112). Cadman testified that as she was leaving the bar, Inglese told her not to forget to bring the clothes and to give them to either he or Delvecchio, but if neither one was there, to wait. She testified she then went to her

boyfriend's mother's apartment where they used the drugs and got high (112, 114).

A short time later the witness returned to Diane's Bar and sold Inglese Three Hundred dollars worth of stolen women's clothing, out of which she repaid the Twenty dollar loan. She told Inglese that the stuff was nice (115).

The witness testified that on another occasion in June 1969 she brought stolen women's clothing to Diane's Bar and Inglese asked her if she would take heroin in payment instead of money. She agreed to take part of her payment in heroin with the rest in cash and she received Three Hundred dollars for the clothes (116, 117). She testified Inglese told Delvecchio she wanted one half ounce of heroin which she received from Delvecchio. She then gave Two Hundred dollars to Inglese who gave her Fifty dollars in change (118). Upon leaving Diane's Bar, she again took the drugs to her boyfriend's mother's apartment where they used it and got high (119, 120).

The witness went to Diane's Bar six nights a week with stolen women's clothing which she sold to Inglese and for which she received cash and heroin, sometimes an ounce, sometimes half an ounce, paying One Hundred and Fifty dollars for half an ounce and Three Hundred dollars for an ounce (120-122). Cadman testified that Inglese told her that the clothes were for his wife and family and that she sold him clothes nearly every day for a two or three month period (195). In July, 1969, she stopped selling clothes to Inglese when he said he could not use any more (201).

MARTIN O'BOYLE testified that he is a sergeant with the New

York City Police Department assigned to the Major Investigations Section of the Narcotics Division (217, 218). O'Boyle testified that on May 22, 1973 he observed Frank Stasi exit from 1651 Williamsbridge Road, the Bronx, enter a car and drive away, and that after going three or four blocks, Stasi was placed under arrest and told to open the trunk of his car (219). Stasi complied and, according to O'Boyle, a large box containing smaller boxes of mannite, a scale and a mask was observed (220). The box was returned to Stasi and O'Boyle did not see it again until July 10, 1973 when he saw it at 1113 Vincent Avenue, the Bronx, in Stasi's apartment (221).

O'Boyle testified that as of July 10, 1973, Stasi had served forty-five days of a ninety day sentence on Riker's Island for obstructing Governmental Administration (221-222).<sup>\*</sup> He stated that the box found in the trunk of Stasi's car contained one hundred and sixty boxes of mannite, a mask, a sealing machine, three strainers, two scales, playing cards and one or two miscellaneous items (222-223).

FRANK STASI testified that in 1970 he was employed as a steward at the Beach Rose Social Club, which was located at Wilkinson and Westchester Avenues in the Bronx. Stasi testified he served coffee, made sandwiches, ran errands and parked cars while employed as a steward and that he was paid by tips. Stasi stated he was called Boo-Boo and was given the nickname as a young boy (273-274).

Stasi was arrested in May, 1973 by the New York City Police

---

<sup>\*</sup> Stasi had been released on a bond pending the appeal of his sentence to the Appellate Term of the First Judicial District.

Department while leaving 1651 Williamsbridge Road and at that time he was carrying a box containing a sealer, two scales, a mask, a ring to hold plastic bags, three strainers and large size playing cards (274-275). The items, in the trunk of Stasi's car when he was arrested, were used to mix heroin with mannite (276, 280).

Stasi testified that he saw the defendants, Inglese, Delvecchio and Donato Christiano, a/k/a Finnegan, at the Beach Rose Social Club at various occasions (282-283). He testified that an elevated section of the tracks of the Pelham Bay line of the IRT was located opposite the Beach Rose Social Club (284).

Stasi testified that sometime between the middle and end of 1970 he had a conversation at the Beach Rose Social Club with Inglese who said that he was going to get some goods. Stasi replied saying that he did not know what Inglese was talking about, and Inglese responded by saying he was going to get some junk. Stasi replied that he still did not know what Inglese was talking about, but Inglese told him that Delvecchio was going to be there and he would show Stasi what to do and Stasi agreed (284, 286, 592).

Stasi testified that several days later, at about 9:00 P. M., Delvecchio came to the Club and they drove out to Bloomfield, New Jersey to Delvecchio's house (287). Stasi and Delvecchio left the basement of the house at about 11:30 P. M. and went upstairs, and once there, Delvecchio instructed Stasi to clean the table. Delvecchio then came out of the bedroom with mannite, a sealer, playing cards and scales. Delvecchio spread the mannite on the table and went back into the bedroom, returning with a briefcase containing three kilograms of heroin which he tested (288, 289). Stasi mixed the heroin with mannite by using playing cards. The mixture was

passed through a strainer about six times and the mixture was then placed into bags, sixteen ounces to the bag and sealed. There were twelve bags in all, each containing one pound of heroin (290-292).

After leaving the apartment, Stasi testified, Delvecchio dropped him off at a nearby restaurant, where he remained until Delvecchio returned, whereupon they left to look for Inglese (293). Stasi and Delvecchio went to the Blue Lounge where Delvecchio and Inglese had a conversation and Inglese gave Stasi a Hundred dollars for pocket money (294, 295).

Stasi stated that he mixed heroin with mannite on eight separate occasions (295). Stasi admitted that he could not remember the month that these sessions occurred, but that he remembered that they took place between 1970 and 1972 (303, 370).

Some three months later, Stasi testified that Inglese came to him again at the Beach Rose Social Club and told him to be available, that he was going to New Jersey with Donato Christiano at about 9:00 o'clock (295, 296). Stasi and Christiano drove to Delvecchio's house and when Delvecchio arrived they went upstairs to the top floor of the apartment where Delvecchio took all the paraphernalia out of the bedroom (296, 297). Stasi testified that the mannite in block form was put through a strainer and reduced to powder (298). Delvecchio, then brought out a suitcase with three kilograms of heroin which was mixed with the mannite (300). Stasi testified that the heroin was placed in twelve one-pound bags and sealed and Delvecchio then told him to go and see Inglese and tell him everything was all right, whereupon they all left the apartment and he returned to the Bronx (301). Stasi saw Inglese at the Blue Lounge

and told him that everything had gone all right and Delvecchio and Christiano had gone to see their man and would be back. Later Delvecchio and Christiano came to the Blue Lounge, spoke to Inglese and left (302).

Stasi testified that several months later Inglese asked him if it would be all right to use his apartment and he agreed (303).

Stasi testified that he met Delvecchio at about 9:00 P. M. at the Social Club and they drove out to the vicinity of Bloomfield, New Jersey where Delvecchio sent to several stores and bought a sealer, several strainers, masks, gloves and several additional items. It was these items that were in Stasi's car when he was arrested in May, 1973 (304). He took these items to his apartment in the Bronx and placed them in the kitchen pantry (305). Several days later, Inglese told Stasi to go to a barber shop on Pleasant Avenue and see a man named Joe Red and get some mannite. Stasi went to the barber shop and spoke to Joseph Ceriale, a/k/a Joe Red, who refused to give him any mannite because he had no money. He testified when he told this to Inglese, Inglese told him to go back and tell Ceriale not to worry that he would get paid. Stasi went back and Ceriale agreed to give him the mannite (306, 207). He stated that Ceriale took his car and returned in about an hour with the mannite in the trunk. The four packages of mannite cost Two Thousand dollars (307, 308).

Stasi testified that several days later Inglese told him they were going to use his apartment and that Delvecchio would meet him there, but to ride around for a while to make sure he was not being followed (209, 310). He testified he arrived at the apartment at

9:15 P. M. and Delvecchio arrived shortly after with a suitcase containing heroin (310). Stasi then described how they put the mannite into powder form and mixed it with the heroin (311). He testified that Delvecchio put ten one-pound bags into the suitcase and left two one-pound bags in Stasi's apartment. Delvecchio left saying to Stasi that he was going to see his man and to tell Inglese that he would see him later (312).

Stasi testified that the next day at the Club, Inglese asked him to get one of the one-pound packages of heroin and bring it to him. He testified he put the package on the table in the kitchen of the Club and left, but that he saw John Barnaba walk out with the package. He stated this took place in late 1970 (314).

Stasi testified that about three months later he was at the Club when Inglese told him to leave and meet Delvecchio in New Jersey (316, 317). He testified that he met Delvecchio at his house in Bloomfield, New Jersey and after a while he and Delvecchio went upstairs and they started to mix the heroin and mannite as he had done on earlier occasions (317). After the mixing and sealing was completed, Delvecchio left to go see his man and Stasi went to look for Inglese (318). Stasi and Inglese met at the Blue Lounge where he told Inglese everything was all right.

Several months later, Inglese told Stasi they were going to use his house to mix and that Delvecchio would meet him there at 9:00 P. M. Stasi testified that he rode around for a while and arrived at his apartment about a quarter after nine. Delvecchio arrived carrying a suitcase with three kilograms of heroin and they proceeded to mix it (320). The mannite had been bought from Cerialle

to whom Stasi had paid Two Thousand dollars (321). Delvecchio took ten one-pound bags of heroin with him and left two packages in Stasi's apartment (323).

The following night, Stasi went to his apartment and brought a one-pound package of heroin to the Club which Inglese told him to throw into John Barnaba's car. Stasi put the package into the front seat of a car and John Barnaba was seated behind the wheel (325, 326).

Stasi testified that Inglese told him that the Club was being observed and he was going to close the Club and it was then he started going to Lo Piccolo, an espresso shop at Roberts and Westchester Avenues in the Bronx (327). Stasi and Inglese returned to the Beach Rose Social Club on only one occasion after it was closed and that was when he and Inglese looked for a "bug", but were unable to locate it (329).

Stasi testified he was at Lo Piccolo every day and he used to see the Appellant, Carmine Tramunti, there every day and he saw Inglese there almost every day. He testified he also saw Christiano, Delvecchio and Moe Lentini at Lo Piccolo. He stated these people would arrive there about 1:00 P. M. and leave at 6:00 P. M., returning later in the evening (330, 331).

Stasi saw Ceriale at the barbershop on Pleasant Avenue and again gave him Two Thousand dollars for a quantity of mannite. Ceriale took Stasi's car and upon returning an hour later, gave Stasi the keys. Stasi drove to his apartment and put the mannite in the kitchen pantry (331-333). Several months later, Inglese told Stasi to meet Delvecchio in New Jersey and he drove to Delvecchio's house

in his own car (334). He testified that the mannite, in powder form, was mixed with the heroin that Delvecchio had in the trunk of his car and that afterward he met Inglese at the Blue Lounge (335-337).

In late 1971, Stasi met Inglese who told him that Lentini was going to mix with him at his apartment. Stasi went to his apartment and he and Delvecchio showed Lentini how to cut and package the heroin. When they were finished, all three left, with Stasi and Delvecchio driving down to the Mardi Gras on 49th Street and Seventh Avenue in Manhattan with twelve one-pound packages of heroin in the trunk of Stasi's car (338, 339).

Several months later, Inglese gave Stasi Two Thousand dollars to get some mannite which he placed in the pantry closet (341). The next day, Inglese told Stasi that Delvecchio would meet him at his apartment (341, 342). Stasi testified that Delvecchio and Lentini were at the apartment, but Delvecchio left and he and Lentini mixed the heroin and mannite. Stasi left the narcotics in the apartment and went to the Lo Piccolo to tell Delvecchio that everything was taken care of. Delvecchio and Stasi then returned to the apartment and Delvecchio took the packages of heroin (343).

Stasi testified he was paid Two Thousand dollars by Inglese each time he mixed heroin, although on July 10th, 1973 he admitted he told Police that Inglese never gave him any money (371, 695). He testified that, on occasion, he would be paid in the basement of Inglese's house with Delvecchio and Christiano present and that on those occasions he would help Inglese count the money that was there, placing it into One Thousand dollar stacks. He estimated the amount of money to be between Thirty and Forty Thousand

dollars (347, 373). Inglese, Delvecchio and Christiano all received a portion of the money that was being counted in the basement (375). Stasi testified that he saw Inglese give money to Frank Pellegrino on two occasions and he would take it to the bank and exchange the small bills for big bills (377, 378).

Stasi testified that he saw Butch Mamone at the Beach Rose Social Club three or four times a week and saw him speak to Inglese, but did not hear what was said. Once, Inglese sent Stasi to Mamone's house with a message that he wanted to see him (381).

Stasi testified that he overheard a conversation between Inglese and the Appellant, Carmine Tramunti, at the Lo Piccolo, while he was on his way to the men's room and while he remembered it took place at 2:30 P. M., he could not remember the date (383).

Inglese said, according to Stasi, "I expect some goods. I am going to need some money", and Tramunti nodded his head. He testified that as he passed Inglese said to him "I want to see you, I want to talk to you." Stasi then went to the front of the shop and had a cup of coffee and Inglese joined him and said "I will see you tomorrow", whereupon Stasi left (384).

Several days later, Stasi testified, he met Inglese walking into Lo Piccolo and he said "You wanted to talk to me", and Inglese replied "I expected some goods and I didn't get it" (385). Stasi testified, over objection, that the term goods meant narcotics (385, 386).

Stasi stated that on one occasion he was invited to the Tear Drops Bon Soir, a nightclub in the Bronx by Vincent DiNapoli\* and

---

\* Stasi identified Vincent DiNapoli, who was not a defendant, seated in the spectator section of the Courtroom (435).

was told by DiNapoli that Tramunti was going also. When Tramunti arrived at Lo Piccolo the three men drove to the nightclub in Stasi's car. Upon arrival at the nightclub, Stasi went to park the car while Tramunti and DiNapoli went into the nightclub (387, 388). There were several people at the table and Stasi testified he was in conversation with Tramunti who said "I miss the big guy. Without him nothing goes right. You know the club, there's nothing happening in the club." Stasi testified he replied "By the way I am going and see Gigi (389, 390).

Stasi testified he saw Inglese the next day in downtown Manhattan\* and that Inglese asked him what was happening and he replied it was slow and that he had not seen Delvecchio or Christiano. Inglese, according to Stasi, expressed the wish that something would happen so he could get some money. Stasi testified he then told Inglese that he had seen Carmine and he says about the conversation about the money yes or no, you would know (390). Inglese replied "If you don't know what's happening, I don't know. Just say no." Stasi testified the next day he went to Lo Piccolo and he saw Tramunti watching the card game and he told him "I went to see Gigi. He told me no about the conversation" and Tramunti replied "all right. I guess nothing is happening".

Stasi testified that some three months before April 24, 1973\*\* there was a conversation between him, Tramunti and Inglese (395). He testified that Inglese told Tramunti he was having a difficult

---

\* Inglese was incarcerated at the Manhattan House of Detention for Men, 125 White Street, New York, New York, serving a four month sentence upon his conviction for drunken driving (3676)

\*\* Moe Lentini was arrested on Federal charges April 14, 1973 and was released on a \$75,000 personal recognizance bond and \$25,000 cash bond on May 4, 1973 (4388).

time getting Moe Lentini out of prison and Tramunti replied by saying "Well get him out" and inquiring as to how much the bail was. When told by Inglese that it was Seventy-Five Thousand dollars Tramunti said "you mean to tell me you can't get up Seventy-Five Thousand dollars. Well. Try to get him out " (395). Inglese said he needed property for collateral to which Tramunti responded "there's nothing I can do about that" (396).

Stasi testified Inglese turned to him and said it was important to get Lentini out because Delvecchio was hot and could not do anything and Lentini was good with figuring and mixing (396). He started to leave and Inglese asked him to go to Lentini's girlfriend's house to tell her to have patience, that Delvecchio had someone with property to get Lentini out of jail (397). Stasi testified that he spoke to Lentini from his girlfriend's house and told Lentini that Tramunti had someone with property and "he'll try to get you out" (399).

He testified that after Lentini got out on bail he told Stasi to see Jack Spada, a/k/a Jackamini, at the Pelham Log Cabin because Spada had something for him. He testified he met Spada at 8:00 P. M. at the Pelham Log Cabin and that Inglese, Christiano, Spada and Jerry Savarino were present. When Stasi arrived, Inglese said "Here's a guy sitting on something and you're late. If I wasn't to know anything I know about it now." Stasi and Spada entered the men's room and Spada had a half kilogram of cocaine for Moe Lentini (696, 697). While they were in the bathroom, Inglese came in and took a quantity of cocaine, whereupon Stasi took the remaining cocaine and left the restaurant (399-402). Stasi admitted,

however, that Inglese had nothing to do with his purchasing cocaine from Spada, that it was mere coincidence that Inglese was there (697).

Stasi took the cocaine to the apartment of Mary Jane Salvani, a/k/a Liz, at 1651 Williamsbridge Road and placed it in a closet in the living room from where he removed it little by little and some of it he took to the Centaur, a bar on 46th Street, between First and Second Avenues in Manhattan, where he gave a sample of it to the defendant Vincent D'Amico, a/k/a Vincent Rizzo (402, 403).

Several weeks later, Stasi testified, he was at the Centaur with D'Amico who asked him if he could get any heroin and Stasi replied that if he could he would let him know (406). He testified that the next day he was approached by George Toutoian, a co-defendant, who asked him if he needed any heroin and Stasi replied that he could use the "quarter" that Toutoian was offering for sale (407). They agreed to meet the next day at the Pelham Log Cabin restaurant and Toutoian brought Stasi the quarter kilogram of heroin which Stasi then took to D'Amico's apartment on West 57th Street in Manhattan. D'Amico, according to Stasi, weighed the heroin on a scale and gave Stasi Seven Thousand dollars (407-409). Stasi testified he paid Sixty-Five Hundred dollars to Toutoian and kept Five Hundred for himself (409). Stasi admitted that Toutoian had no connection with Inglese and Inglese did not know of these dealings (675, 676).

Stasi testified he was arrested in May, 1973 leaving the apartment of Liz at 1651 Williamsbridge Road, the Bronx, and was on his way to meet an individual named Jimmy Wyatt Earp (418). He testified that he had met Jimmy Wyatt Earp the night before at the

Golden Arm and Earp had told him that Inglese said he had paraphernalia and Stasi was to give it to him. They agreed to meet at 3:00 P. M. the following day at the Flaming Pit, a restaurant (419, 420).

Stasi was arrested, and after agreeing to cooperate with the authorities, the paraphernalia was returned to him and he went to the Centaur Bar (421, 422). There Stasi spoke to D'Amico who told him he was more interested in heroin than cocaine and Stasi told him that if he heard of anything he'd let him know (423). Stasi then took the paraphernalia back to his apartment.

Stasi testified that after his arrest he met Moe Lentini, who told him to bring an "eighth" of cocaine which he was to give to Dominick Lessa. That night, Stasi met Lentini and gave him the cocaine in the men's room of the Barone Bar (426, 427). Lentini left the bar and took the cocaine to his apartment when Lessa failed to appear. Lessa then came into the Pleasant Avenue Bar (428).

Stasi is under indictment in New York State Supreme Court for the sales of heroin to an undercover Police Officer, and he stated that he expects to plead guilty to those charges. He stated he thought he could receive up to 25 years on those charges, but that no promise has been made to him as to his sentence (431, 432, 504).\*

Stasi admitted that while he was in custody, he was able to obtain and did obtain cocaine (500).

Stasi testified that Lo Piccolo was an espresso shop where

---

\* Stasi was not named as a co-defendant in the indictment of the case on trial, nor was he indicted in either State or Federal Court for any one of the eight cutting sessions he participated in or any of the deliveries he made with the heroin that he had helped to cut and package.

people gambled and played cards, pinochle and ziganet, an Italian card game (507). He stated that the card games, to his knowledge, were run by Carmine Tramunti and that ten percent was taken out of every game and the money would be picked up by Carmine Tramunti. Stasi stated that he had played cards there once and admitted having lost Seven Hundred dollars (508). He admitted that he took numbers and that he had done so for three or four years. Stasi testified that he had known the Appellant, Tramunti, for two years, since he had started going to the Lo Piccolo and that Tramunti had told him not to take numbers there because he did not want anything like that going on at the Lo Piccolo (509).

Stasi admitted that he had never discussed narcotics with Tramunti nor had he ever used the word narcotics with Tramunti (509). Stasi admitted that Tramunti had never talked to him about narcotics and that he never delivered or picked up any narcotics for Tramunti. He admitted that he never delivered nor was he ever given any money for narcotics by Tramunti (510).

Stasi admitted that he had told a Lieutenant Whalen that the conversation between Inglese and Tramunti had taken place in the early part of February, 1973 (514).<sup>\*</sup> Stasi stated that after Inglese said "I'm going to get some goods I expect some money -- I need some money" Tramunti nodded his head and put out his hands (522). Stasi admitted that on a prior occasion he had told a law enforcement official that the Appellant had nodded his head and made a sign with his hand (522).

---

\* Inglese was incarcerated from January 19th to April 26, 1973 as a result of his conviction for drunken driving (3676).

Stasi admitted that he had never heard Tramunti talk about narcotics and that he never heard the expression "goods" used by Tramunti (523). He admitted that he had been told by the authorities that they wanted to "get" the Appellant, Tramunti (532).

Stasi stated that he was confused when he was debriefed and he might have told the authorities on July 14, 1973 that the conversation at Lo Piccolo between Inglese and Tramunti took place after Inglese was released from jail on the drunk driving charge in April 1973 and the word "something" rather than the word "goods" was used.

Stasi admitted that he told the Police prior to trial:

"like, again, couldn't I lie about it and say yes, I heard him talk about junk, where he got it from? Don't I know that would help a lot? Or do you want me to say something that I didn't hear" (540).

Stasi admitted that he had been promised airline tickets and that he told law enforcement officials that he did not want to go to jail (542, 543).<sup>\*</sup> Stasi admitted that he had been told by law enforcement officials that he would spend a month or two with them and that he would then get airline tickets to where he wanted to go, a new identity and that he would be as safe as in his mother's arms (544).

Stasi admitted that on the day he was arrested, May 23, 1973, he asked how he knew he would be let off and one of his interroga-

---

\* The Government conceded that in addition to the airline tickets, Stasi had been told by his interrogators on July 10, 1973 that he would receive a pot o' gold in addition to his airline tickets (4385, 4386).

tors responded "Okay because I say so" (549).

Stasi admitted that when he was arrested he told the Police that heroin cutting sessions had been held in his apartment and in New Jersey, but that he did not know where in New Jersey (571). Stasi admitted that even though he agreed to cooperate after the Police Officer to whom he had sold heroin appeared in the room, he deliberately lied even after agreeing to cooperate (572). Stasi admitted that he was told that if he came up with good information his "slate would be wiped clean, but if not, he would still face charges on two felony sales of narcotics" (581, 582, 4385).

Stasi testified that in July, 1973 he owed about Forty Thousand dollars and that if he was relocated by the Government he would not have to repay Forty Thousand dollars (588).

Stasi admitted that when he had his first conversation about narcotics he did not know what the words "goods" or "junk" meant (592).

Stasi admitted that he had gone over the questions and answers asked him on direct examination two or three times a week for a three week period (436, 616, 617).

Stasi admitted that he had told law enforcement officials that when he had money he paid Two to Three Hundred dollars a week for cocaine and that he used cocaine about three times a week (425, 656).

Stasi stated that both his sales of heroin to the Police Officer were of approximately one pound of heroin (674) and that on both occasions he had gotten the heroin from George Toutoian (675, 678). Stasi admitted that while being debriefed, he had told the Police that the narcotics cutting material in his house had been obtained from George Toutoian (688). Stasi also admitted that he had told

the Police that Moe Lentini had never mixed heroin at his house and that he did not know where, if at any place, Lentini had ever mixed heroin (689).

Stasi admitted that he had originally told the Police that he never delivered narcotics (691, 692).

Stasi admitted that he had told the Police that Inglese had said to Tramunti at the Lo Piccolo "I need some money" and Tramunti responded "How much money do you need?" and Inglese said "a little bit because I expect something" and that he also told the Police that he did not know if the conversation referred to narcotics and that there was no mention of the word "goods" in the conversation (704, 705), but that he said this because he was afraid of Tramunti. A motion for withdrawal of a juror was denied (885, 886).

Stasi admitted that the conversation between Tramunti and Inglese referring to money concerned money coming from a card game in which each had an interest. He also admitted that Inglese, as well as others, would ask the Appellant for a cash advance from the kitty in the card game (706). Stasi admitted that he had told the Police that he did not think that Inglese and Tramunti would discuss narcotics (707, 708). Stasi testified that he was afraid of the Police hearing the name Carmine Tramunti and defense counsel's motion for a withdrawal of a juror was denied (708, 709).

Stasi admitted that during his interrogation he was trying to satisfy the Police (709, 711). He admitted telling the Police "I've told the truth. Then tomorrow I might be lying. Like I say, not that I'm lying. I don't remember" (712).

FRANK DABBIERO, a detective with the New York City Police Department testified that he performed surveillance on the Beach Rose Social Club from May 15, 1971 to January 15, 1972 and that he was at that location approximately forty-five or fifty times (909-911). He testified that on those occasions he saw Inglese almost every time and that he also saw Frank Stasi, Donato Christiano, Frank Pellegrino and Joseph Delvecchio quite often at that location (912, 913).

FRANK DeMARCO, a detective with the New York City Police Department testified that in April, 1972 he conducted surveillance at the Beach Rose Social Club from a storeroom on the elevated subway station of the Pelham Bay line (934-936). He identified a series of pictures he had taken at that time and the following individuals in those photographs: Moe Lentini, Benjamin Castellazo, Donato Christiano, Frank Pellegrino, Louis Inglese, Mario Starace, Ralph Tutino, Joseph DiNapoli, Frank Stasi and Vincent Papa (937-941).

KEVIN DALY, testified that he is a detective with the New York City Police Department (949). He testified that on February 12, 1973 he followed Frank Stasi from the Log Cabin Bar and Grill to Lo Piccolo Espresso Shop, arriving there at approximately 8:40 P. M. At 9:00 P. M. Stasi exited the Lo Piccolo with two other men and proceeded to the Bon Soir Tear Drops, a nightclub (951). Daly testified that he saw the two men exit from the car and enter the nightclub. Stasi parked the car and entered the nightclub (952).

He testified that he and two other detectives entered the Bon

Soir Tear Drops and that he and detective O'Donnell stood by the bar from where he saw the Appellant, Tramunti (954, 955). In addition to Stasi and Tramunti at the table were four other men and two women (955). Daly testified that Stasi and Tramunti left the nightclub together at 3:00 P. M. after being there for some five hours at the same table (956, 963).

Daly admitted that there were in fact five men and three women at the table on cross-examination (965). He also stated that he tried to take pictures of Stasi and Tramunti, but the camera malfunctioned (966, 967).

JAMES O'DONNELL, a detective with the New York City Police Department testified that on May 1, 1973, he followed Frank Stasi to Lo Piccolo Espresso Shop and after a few minutes he saw Stasi exit accompanied by Louis Inglese and Carmine Tramunti (1103-1105, 1126). He testified Stasi got into a car with Inglese and Tramunti entered another car. The Stasi car proceeded to Middletown Road and Westchester Avenue and parked (1106).

On February 12, 1973, O'Donnell testified, he followed Frank Stasi and two white males to the Tear Drops Bon Soir, a bar (1107, 1108). He testified that he entered the nightclub with Detective Daly and saw Tramunti and Stasi together at a table with several other males and three females. Stasi and Tramunti were in conversation from time to time according to O'Donnell (1112-1113). He testified that Detective Connally obtained a camera, but that he did not attempt to take pictures of Stasi and Tramunti (1116-1117). He stated that the nightclub was packed with over two hundred people (1130).

JACK FASANELLO, a forensic chemist employed by the Drug Enforcement Administration, testified that on December 13, 1973 he went to 1113 Vincent Avenue, the Bronx and found traces of heroin of the leaf of the kitchen table and manitol under the refrigerator (1134-1142).

FRANCIS J. CONNELLY, a Police Officer with the New York City Police Department, testified that on February 12, 1973, he saw Frank Stasi and two other unknown males enter the Tear Drops Bon Soir. Upon obtaining a camera, he returned to the nightclub and took pictures of the band area. He testified that he saw Carmine Tramunti and Frank Stasi, but that he did not take pictures of them. Connelly testified that on May 2, 1973, at about 1:15 P. M. he saw Carmine Tramunti, Louis Inglese, Frank Lalli and a fourth unidentified male in front of the Lo Piccolo engaged in conversation for ten to fifteen minutes (1190-1196).

Connelly stated that on May 29, 1973, from an apartment at 1651 Williamsbridge Road, he took a sample of white powder from a bag which contained about one pound of white powder and took it to the chemist (1196-1197). On May 30, 1973, at about 8:30 P. M., Connelly testified he was in the vicinity of 116th Street and Pleasant Avenue in Manhattan and he saw Frank Stasi engaged in conversation with Moe Lentini outside of Barone's Bar (1197, 1200).

Connelly testified that after 11:00 P. M. he went to the Centaur Bar, entered and after a few minutes he saw Frank Stasi enter and engage in conversation with Vincent D'Amico (1201-1202).

JOHN BARNABA testified that in 1952 he was in the U. S. Army

Reserve and was convicted of desertion and received a one-year prison sentence and a bad conduct discharge. In 1953 Barnaba was convicted of violating the Federal Narcotics Law and received a two-year prison sentence, and again in 1957 he was convicted of violating laws of the State of New York and was sentenced to a term of imprisonment of from two and one-half to five years. In 1972 he was indicted for a violation of the State drug law and he intends to plead guilty to that charge (1236-1239).

Barnaba testified that in 1962 he met Richard Fobrick who worked at an animal hospital on Boston Road in the Bronx, and in December of 1969 Fobrick asked him if he could get narcotics and these discussions continued for five or six months with Barnaba promising to let him know if he found anything (1240-1243).

Barnaba testified that he had known Louis Inglese for fifteen years and that in July, 1970 Inglese agreed to get "goods" for him. Inglese told him that he could be found at the Beach Rose Social Club and to see Christiano, Delvecchio or Pellegrino if he was not there (1244-1246).

In August, 1970 Barnaba saw Fobrick at the animal hospital and he wanted a "quarter" of heroin and a "quarter" of cocaine (1247). Fobrick said the heroin was for "the Arrow" and the cocaine was for Tolopka (1249). Barnaba testified he went to Inglese at the Social Club and Inglese told him the price for the heroin was Five Thousand Five Hundred dollars and Three Thousand for the cocaine (1250-1252). He testified he went to the hospital to tell Fobrick the price and obtain his approval. He returned to the Social Club and Inglese told him to park his car down the block and wait (1252-1253). After

fifteen or twenty minutes, Barnaba testified that a black Cadillac driven by Delvecchio pulled alongside his car and Christiano handed him a sealed package saying "the cake is marked" (1254). Barnaba drove to the animal hospital and, filing to find Fobrick, he went to Benjamin Tolopka's house looking for him (1255). Fobrick was not there, but Tolopka told him to bring in the cocaine. Barnaba went into the basement of Tolopka's house where he saw "a colored guy" and he gave Tolopka the cocaine, who gave it to the "colored guy" who sniffed it. Tolopka told Barnaba he would pay Fobrick the next day and Barnaba agreed (1256-1258). Barnaba testified he saw Fobrick the next day and he gave him the heroin (1258-1259). They met again by the hospital the following day and he received Eighty-Five Hundred dollars from Fobrick who agreed to pay Barnaba Five Hundred dollars for every "quarter" he received from Barnaba (1259-1260). Barnaba gave the money to Inglese at the Club. Inglese then told Barnaba he would have to pay in advance for narcotics (1260-1262).

Barnaba testified he gave money to Inglese and returned to the animal hospital where he received a Thousand dollars from Fobrick (1296). In September, 1970 Barnaba saw Fobrick and agreed to supply him with a "quarter" of heroin, providing Fobrick would put up the money (1297, 1298). He testified he then saw Inglese at the Club who agreed to supply the "quarter" of heroin that night for a price of Five Thousand Five Hundred dollars. Barnaba returned to the animal hospital, saw Fobrick and received Six Thousand dollars. Barnaba then went to the Club and gave Fifty-Five Hundred dollars to Inglese (1298-1300). After waiting three or four hours,

Barnaba testified that Christiano, who had left the Club, returned and some ten or fifteen minutes later Inglese motioned to him to go to the bathroom where Inglese extracted a brown paper bag from under the bowl and gave it to him and he gave it to Fobrick (1301-1305).

Barnaba testified that after he declined Inglese's offer to hold a "half" for him, Inglese told him that he might be out after that (1304).

In October, 1970 Barnaba testified that he met co-defendant Dominick Lessa at the Pine Tree Inn, who agreed to supply him with any amount Barnaba wanted (1305-1306). The next day, Barnaba testified, he saw Fobrick at the animal hospital and agreed to try and supply two "quarters" for a customer of Fobrick's named "Trinnie" (1307, 1308). The next day at 8:00 P. M., Barnaba met Lessa who agreed to provide the two "quarters". They drove in Lessa's car to Long Island where Lessa parked and walked some three, four blocks and entered a bar (1309-1311). Barnaba waited for Lessa to return and, upon his return, he received a paper bag from Lessa who told him he had two days to pay for it or return it (1312). There were two packages in the bag which Barnaba gave to Fobrick at the hospital (1312). The following day Barnaba testified that he picked up Fifty-One Hundred dollars at the hospital from Fobrick and met Lessa and gave him Ten Thousand dollars (1317, 1318).

Later, in October, 1970, Barnaba testified he agreed to supply Fobrick with an "eighth" of cocaine and he made an appointment to see Lessa at 9:00 P. M. at the Pine Tree Inn (1319, 1320). They met and drove out to Long Island and Lessa told Barnaba he was doing business with Vincent Papa (1320, 1321). Upon their arrival, Lessa

parked the car and upon his return asked Barnaba if he wanted the "eighth" plus two additional "quarters" of cocaine. Lessa told Barnaba that the cocaine was dark brown in color and the price for the "eighth" was Eighteen Hundred dollars and the two "quarters" cost Thirty-Five Hundred dollars each. Barnaba testified he told Lessa that the price was too steep and he could get it for less from Inglese. Lessa replied that his drugs were pure while Papa cut Inglese's one and one (1321-1322). Lessa then left the car again and upon his return gave Barnaba a paper bag (1325). Barnaba testified he went to the hospital and saw Fobrick and told him to see if he could find any customers for the "quarters". Fobrick responded that he would see if "the Arrow" could take it. The next day, Barnaba met Fobrick, who told him he could not dispose of the "quarters" and that he had gotten back the "eighth" from "Ben" who said it was no good (1326-1328). Barnaba, after looking at the bag, told Fobrick he could not take it back because the bag was open and would have to be paid for. Barnaba had Fobrick call Tolopka, but Tolopka refused to pay for the cocaine stating he had opened the bag to test it and an argument ensued. Barnaba testified he decided to drop the matter when he saw Tolopka was wearing a gun, but he told Fobrick not to give Tolopka anything more (1328-1330).

Barnaba testified he met Lessa that night at 9:00 P. M. and he gave him back the two "quarters" of dark brown cocaine (1330, 1331). The following day, Barnaba spoke to Fobrick who told him "the Arrow" was interested in the "eighth" of cocaine returned by Tolopka. Barnaba told Fobrick to charge "the Arrow" Eighteen Hundred dollars for the "eighth" (1331). Barnaba testified that Fobrick had put up Twelve Hundred and Fifty dollars and he had put

up Five Hundred and Fifty and he gave the money to Lessa when Lessa refused to wait for payment (1332). Barnaba testified that Fobrick told him that "the Arrow" had taken the package and he later got back his Five Hundred and Fifty dollars (1333).

In November, 1970 Barnaba saw Inglese at the Club, who told him if he needed anything he had it (1335, 1336). A short time later, Fobrick told Barnaba he needed a "quarter" of cocaine and a "quarter" of heroin. Barnaba saw Inglese, who agreed to provide the drugs and Fobrick gave Barnaba Eighty-Five Hundred dollars (1336, 1337). Barnaba gave the money to Inglese, who told him to see Christiano or Delvecchio about picking up the drugs. Delvecchio told Barnaba to get in his car, go down the block, park and wait. Barnaba did as instructed and after ten or fifteen minutes, Delvecchio and Christiano appeared in a black Cadillac convertible with New Jersey plates and Christiano handed him a package (1338-1340). Barnaba returned to the hospital where he saw a "colored guy" and a white girl when he entered, but he did not know either one and he walked into the back and put the bag on the table. Fobrick identified the "colored guy" as "Jimmie from Washington". After being introduced, Barnaba left and several days later Fobrick gave him One Thousand dollars (1340, 1341).

Barnaba testified that in November, 1970 he saw Fobrick at the hospital and agreed to provide him with a "quarter of heroin. Prior to returning to the hospital for his money, Barnaba went to the Club and saw Inglese who agreed to provide the "quarter" of heroin. Barnaba returned to the hospital and received Six Thousand dollars from Fobrick, Five Thousand Five Hundred for the heroin and Five Hundred for himself. He gave Fifty-Five Hundred dollars to Inglese, who in

turn talked to Stasi and Christiano (1354-1356). Stasi and Christiano left the Club telling Barnaba to wait. After twenty minutes they returned and Stasi told him the package was in his car. Barnaba give the package to Fobrick (1357).

At the end of November, 1970 Barnaba again saw Fobrick and agreed to provide him with a "quarter" of heroin (1358). After seeing Inglese at the Club, Barnaba went back to the hospital where he got Fifty-Five Hundred dollars from Fobrick, which he gave to Inglese. Inglese counted the money on the bar at the Club, assisted by Butch Mamone (1359, 1360). Barnaba returned to the Club that night and Inglese told him to come to his house at midnight. Upon arriving at Inglese's house, he found Inglese, Delvecchio and Christiano. Barnaba took the package to the animal hospital where he gave it to Fobrick (1361, 1362).

In December, 1970, Barnaba agreed to provide Fobrick with an "eighth" of heroin for Thirty-Five Hundred dollars (1363). After giving the money to Inglese, Barnaba returned to the Club each day for the next ~~ten~~ days to see Inglese, but Inglese did not supply the heroin (1364-1367). Finally, to appease Fobrick, who was worried about the money, Barnaba proposed to Inglese that he bring Fobrick over to meet Inglese, who agreed, after Mamone, whose wife was a friend of Fobrick's wife, said Fobrick was all right (1367-1369). Barnaba testified that during this ten day period, Ralph Tutino, a co-conspirator, told Inglese he would see "this guy" and try to pull twelve packages off. He testified that twelve packages meant twelve kilograms of heroin and that Inglese told Christiano that the "guy" was Vincent Papa (1370-1372). Fobrick needed the money back, so Inglese sent his son-in-law to his house to get a

bag from Inglese's wife, which Inglese, upon his son-in-law's return, gave to Barnaba. Inglese gave the bag, which still contained the original money, to Barnaba who gave it back to Fobrick (1373-1374).

Barnaba testified that Frank "Butch" Pugliese told him that he had shot "the Arrow" in the knee up at Hank's, a "colored" guy's house (1418). Pugliese shot Paul Gregorio, who was a customer of his, because he owed him money for narcotics (1420, 1421).

In May, 1971, Barnaba testified that he was visited by a "colored" guy named Burke at a used car lot where he was employed as a salesman. Burke, sent by Fobrick, wanted an "eighth" of heroin (1421, 1422). Burke was to return the following day with Three Thousand dollars, but in the meantime, Barnaba saw Inglese who agreed to supply him with an ounce of pure heroin and three ounces of mannite for Two Thousand dollars (1423, 1424). Barnaba met Burke the following day and took Two Thousand dollars to Inglese at the Club and received the heroin and mannite from Inglese. Barnaba mixed the heroin and mannite and the next day he gave it to Burke (1424, 1425). Several days later, Barnaba returned to the used car lot and was told that two "colored" guy, one carrying a gun, had demanded to know where he lived. Barnaba left the lot and did not return, but he called Burke who told him the stuff was "no good" and that he had thrown it down the toilet. Barnaba told Burke "Well, then you own it." Barnaba told Inglese about his problem and Mamone overheard the conversation and said that Burke was a customer of his who owed him Twenty-Five to Thirty Thousand dollars and he would try to straighten out the entire matter (1425-1427). Several days later, Barnaba met Mamone who told him that

Burke would deduct the Three Thousand dollars from the money he owed Mamone and Barnaba was to pay that money to Mamone. Barnaba never paid the money to Mamone (1428).

In the summer of 1971, Barnaba met Frank Pugliese at a meeting at Izzy's, a luncheonette (1430). Pugliese, introduced him to Hank Springer and told Springer if he needed anything to get it from Barnaba (1431, 1432). Barnaba was introduced to Pat DiLacio and Harry Pannirello by Frank Pugliese and Pugliese told DiLacio to give Barnaba whatever he wanted on consignment (1433, 1434). They agreed on a price of Twenty-Five Thousand dollars a kilogram of heroin. In either August or September, 1971, Barnaba sold an "eighth" to Springer for Thirty-Five Hundred dollars which he had obtained from Pat DiLacio for Three Thousand dollars (1435-1437). In that same period of time, Barnaba was introduced to Anthony Pagano by Frank Pugliese who told Pagano if he needed anything to get it from Barnaba. According to Barnaba, Pugliese was owed Three Thousand dollars by Pagano (1438, 1439).

In September, 1971, Barnaba testified he again saw Frank Pugliese at Izzy's luncheonette accompanied by an individual known as "Joe Sharp". Pugliese told Barnaba that he could put goods in Joe Sharp's house, Sharp would hold it for him, and he was to receive a Hundred dollars for every "eighth" that Barnaba sold (1440).

Several days later, Barnaba was introduced to Frank Russo at Izzy's Luncheonette by Frank Pugliese. Russo made arrangements to buy an "eighth" from Pugliese and Barnaba made plans to meet Russo at 9:00 P. M. at Tardi's, a catering hall in the Bronx (1441). At 8:00 P. M. Barnaba met Pugliese and at about a quarter to nine

Pugliese told him to meet him on the service road of the Bruckner Expressway near the Bruckner Apartments in five minutes. Pugliese departed and Barnaba met him near the Bruckner Apartments where Pugliese handed him an "eighth" of heroin, which he in turn gave to Frank Russo at Tardi's. Later that evening, Barnaba joined Russo and Pugliese at a diner where Russo gave Three Thousand dollars to Pugliese of which Two Hundred went to Barnaba (1442-1444).

In either September or October, 1971, Barnaba met with Frank Pugliese, Pat DiLacio and Harry Pannirello at Izzy's Luncheonette and Pugliese told DiLacio to give Barnaba a "half kilo in eighths", which was to be paid for as Barnaba sold it (1446-1447). The following night, Barnaba met DiLacio on the service road of the Pelham Parkway near Eastchester Road at 9:00 P. M. where DiLacio gave him four packages each containing an "eighth" of heroin. Barnaba, that same night, turned the package over to Joe Sharp and gave him a satchel containing a thermometer and scales from Frank Pugliese (1448-1449).

In late October and November, 1971, Barnaba, on three separate occasions, sold an "eighth" of heroin to Hank Springer for Thirty-Five Hundred dollars each (1449-1450). In November, 1971, Barnaba sold an "eighth" of heroin to one Frank Monaco for Thirty-Five Hundred dollars of which he kept Thirty-Two Hundred and Fifty dollars (1451-1452). Barnaba on two occasions in November, 1971, paid DiLacio and Pannirello for the half a kilo he had obtained from them, but that instead of paying Twelve Thousand Five Hundred dollars, he held back Seventeen Hundred dollars (1452-1453). In November, 1971 Barnaba met DiLacio and Pannirello at DiLacio's apartment and he left with Harry Pannirello (1453). Barnaba and

Harry Pannirello drove to the Bronx and while there, Barnaba saw Pannirello in conversation with John Gamba, a/k/a Frank Sinatra. After the meeting with Gamba, Barnaba and Harry Pannirello drove to a Howard Johnson's motel in New Jersey where he saw Pannirello give a package of drugs to one of two "colored" guys (1454-1455).

Barnaba testified that in the middle of September, 1971, Frank Pugliese told him that Inglese had asked him to get a package on consignment from Vinnie Papa, but that he had refused (1456). In October, 1971, Barnaba and Frank Pugliese had gone to the Cottage Inn and while there Pugliese had told him that Joseph DiNapoli owned the Cottage Inn and that he, Pugliese, and DiNapoli were partners in everything, but the Cottage Inn (1457-1458).

Barnaba testified that in the middle of 1973 he saw Carmine Tramunti at the Lo Piccolo Espresso Shop. He also testified that he saw Donato Christiano there one time sitting at a table alone (1462-1463).

In August or September, 1973, Barnaba testified he saw Tramunti at the Lo Piccolo. Barnaba stated he was looking for Frank Lalli, a/k/a Joe Flat, who he did not see there. Christiano was there and Barnaba testified he asked out loud if "Joe Flat" was there and Tramunti said he was not there and told him to look in the pizza place or pet shop. Barnaba testified he was unable to find "Joe Flat" and returned to Lo Piccolo where he told Tramunti "He's not there". Tramunti replied, according to Barnaba, "He's not here what do you want from me? What do you want me to do? He must have went somewhere." Barnaba testified he asked Christiano to talk, but he refused saying he was busy cutting a game (1464-1465). Barnaba testified that the conversation he had with Tramunti in August

of 1973 could have taken place in May or June, 1973 (1471).

Barnaba admitted that he did not know and had not asked anyone what he was charged with in the Courts of the State of New York (1491, 1680). Barnaba admitted that although he was originally named a co-defendant in this case, that was a cover-up and the Government did not intend to prosecute him for the events to which he testified (1492, 1849).\* Barnaba admitted that after he was arrested by State authorities in November, 1972, he was released without being arraigned or having bail set. In fact, Barnaba testified, it was not until sometime in 1973 that he was finally arraigned and released on One Thousand dollars bail (1493, 1494), although he was originally told he was facing a charge of an "A" Felony and a jail sentence of fifty years (1520, 1521, 1626). Barnaba admitted that the only charge presently pending against him in State Court was an "E" Felony, carrying a maximum term of imprisonment of four years, although he knew that as a three-time narcotics violator he could be subject to an extended jail sentence and that the State could have charged him with an "A" Felony, carrying fifty years to life imprisonment (1627, 1807).

Barnaba admitted he was told by an Assistant United States Attorney prior to his Grand Jury testimony that he would be indicted, but that he would not be prosecuted (1849).

In December, 1972, Barnaba and P. O. Cassella negotiated with one of the Lalli brothers for the purchase of half a kilogram of heroin for Eighteen Thousand dollars (1973).

Barnaba was unable to recall if he had ever told either Mr.

---

\* Barnaba was named as a co-defendant in 73 CR 931 which was superseded by 73 CR 1099 from which Barnaba was omitted as a co-defendant.

Curran or Mr. Phillips, the attorneys for the Government, about the visits he made to Lo Piccolo prior to his appearance before the Grand Jury (1998, 1999).

ALBERT C. LOGAN, a Special Agent with the Drug Enforcement Administration testified that on January 10th, 1973 he received a quarter kilogram of heroin from Harry Pannirello and Jimmy Provitera for Ninety-Five Hundred dollars (2006, 2011, 2013, 2014, 2032, 2077). He testified that on January 19, 1973 he received from Jimmy Provitera a package containing three one-eighths of a kilogram of heroin and a half of a kilogram of heroin (2018, 2021). Logan again on February 2, 1973 was to meet Jimmy Provitera and receive from him half a package of heroin for Twenty-One Thousand dollars, but at that time Provitera was arrested (2028, 2029).

THOMAS DAWSON was the next witness for the Government. Dawson testified that in February of 1971 he paid Paul Gregorio Twenty-Two Hundred dollars for narcotics that Frank Pugliese had sold to Warren C. Robinson (2603-2606). Dawson testified a week later he drove to New York City and was introduced to Frank Pugliese by Paul Gregorio. Pugliese, according to Dawson, agreed to let him have a half kilogram of heroin and later that night Gregorio delivered sixteen ounces of heroin to the room where Dawson and two of his companions were staying (2607, 2611).

In June, 1971, Dawson testified, he gave Thirteen Hundred dollars to Paul Gregorio, but that Gregorio did not bring any heroin. Several days later, Dawson met Frank Pugliese in New York City and after telling Pugliese about the Thirteen Hundred he paid to

Paul Gregorio, Pugliese agreed to give him a quarter of a kilogram of heroin (2621-2623).

Dawson testified that he returned to New York City again with Warren Robinson and he received a half a kilogram of heroin from Frank Pugliese and paid him for the quarter kilogram of heroin that he had previously received (2624, 2634, 2635). Two or three days later Pugliese came to Washington, according to Dawson, and he gave Pugliese Eighteen Hundred dollars (2635, 2636). In July, 1971, Dawson returned to New York City and received a quarter kilogram of heroin from Pugliese after paying him for the half kilogram he had previously purchased (2640, 2641). In August, 1971, Dawson testified, he was introduced to Harry Pannirello by Frank Pugliese, who was going to jail. Pugliese said that Pannirello would be taking his place. Dawson testified that on this occasion he received either half or three-quarters of a kilogram of heroin (2644-2645).

Dawson testified that after he had been doing business with Harry Pannirello for a while, he came to a Howard Johnson's situated on the New Jersey Turnpike and met Pannirello who told him that he, Pannirello, had lost his connection because the connection had been arrested with a huge amount of money, a million dollars (2656, 2657).

SALVATORE SPATARO was the next witness for the Government. His testimony is set forth in the Respondent's brief.

PASQUALE PROVITERA was the next witness called by the Government. His testimony is set forth in the briefs of the Appellants Warren C. Robinson and Henry Salley (2963-3253).

GENEVIEVE PATALANO testified next for the Government. Her testimony is set forth in the brief of the Appellant Joseph DiNapoli (3253-3277).

JOSEPH LaSALATA was the next witness for the Government. His testimony is set forth in the brief of the Appellant Frank "Butch" pugliese (3290-3343).

ALBERT CASELLA, JR., a detective with the New York City Police Department testified that on January 5, 1973 he met Frank Monaco, Frank Russo and John Barnaba in Frank Monaco's apartment (3510-3514). Russo told Casella that he would charge him Nineteen Thousand Five Hundred dollars for half a kilogram of heroin, and when Casella complained about the price Russo replied he was only making a Thousand dollars on the deal (3515-3516). Russo gave Casella a sample of the heroin (3518, 3523).

On January 9, 1973 Casella met again with Russo at Frank Monaco's house, but Russo was unable to make a connection, so they agreed to meet the following night (3525, 3529). On January 10, 1973, Casella testified he met Frank Russo in Korvette's parking lot in the Bronx and Casella gave Russo Nineteen Thousand Five Hundred dollars, and then he extracted a brown paper bag containing sixteen and three-quarter ounces of heroin from underneath the front passenger seat that he was riding in (3531-3533, 3538, 3541). On January 22, 1973, Cassella testified, he received an ounce of heroin from Russo to "tighten up" the earlier package (3545-3550).

The Court, at this point, denied the application of the Appellant, Tramunti, to cross-examine the witness to a conversation

he had with "Fat" Carmine Miranda on January 15, 1973 when Miranda told him that two weeks earlier he, Miranda, had spoken to Louis Inglese who had told him that he was not going to touch any heroin for some time and Miranda should look for another connection. Motions for both a severance and a mistrial were denied (3561-3563, 3567-3569).\*

GEORGE F. REILLY, a member of the New York City Police Department testified that on February 3, 1972 at about 8:00 P. M. he was in the vicinity of 1908 Bronxdale Avenue (3605-3607). He testified that at about 8:45 P. M. he saw Joseph DiNapoli exit a green Pontiac and enter 1908 Bronxdale Avenue carrying a suitcase in his right hand (3607, 3608). He testified that the driver of the car made a "U" turn and parked the vehicle and that prior to the driver entering 1908 Bronxdale Avenue, he recognized him as Vincent Papa (3608, 3609).

Reilly testified that at about 9:30 P. M. that night he saw Papa and DiNapoli exit 1908 Bronxdale Avenue with DiNapoli carrying a suitcase with two hands. Papa and DiNapoli got into the green Pontiac and placed the suitcase in the rear seat behind the driver (3611-3613).

After the Pontiac had gone a few blocks, Reilly testified, he forced the Pontiac to come to a halt by pulling his vehicle in front

---

\* Attempts to serve two subpoenas with witness fees upon Carmine Miranda at 110 Webster Avenue, Harrison, New York and at 3467 Eastchester Road, Apt. 5B, Bronx, New York, were unsuccessful. Mr. Murray Richmond, Esq., Carmine Miranda's attorney informed Appellant's counsel that Mr. Miranda would, on his advice, exercise his Fifth Amendment privilege because of several indictments pending against him in State Court.

of it and Papa exited from the car and was placed under arrest. He testified that DiNapoli was also placed under arrest at that time by Special Agent Pallatroni. Detective Spurdis had the suitcase on the sidewalk and he, Reilly, later saw bundles of Fifty and One Hundred dollar bills and Nine Hundred and Sixty-Seven Thousand Four Hundred and Fifty dollars was found in the suitcase (3616-3618).

PETER PALLATRONI, a Special Agent with the Drug Enforcement Administration testified that on February 3, 1972 he was in the vicinity of 1908 Bronxdale Avenue at approximately 8:45 P. M. accompanied by Special Agent James Reed (3649, 3650). He testified that at about 9:30 P. M. he followed a 1968 Pontiac from Bronxdale Avenue and the car was being driven by Vincent Papa. At East Tremont and Castle Hill Avenues the Pontiac was stopped and DiNapoli was arrested by Police Officer John Spurdis (3651-3653). Pallatroni testified he saw a green suitcase on the sidewalk, which was later found to contain Nine Hundred Sixty-Seven Thousand Four Hundred and Fifty Dollars (3653-3654).

At the close of the Government's case, Count Twenty-Seven charging the Appellant, Tramunti, with the possession and distribution of three kilograms of heroin in May, 1973 was withdrawn from the jury's consideration on the motion of the Appellant with the consent of the Government (3721, 3732, 3733).

On March 13, 1974, after several days of deliberation, the jury found the Appellant, Tramunti, guilty (5558).

ARGUMENT

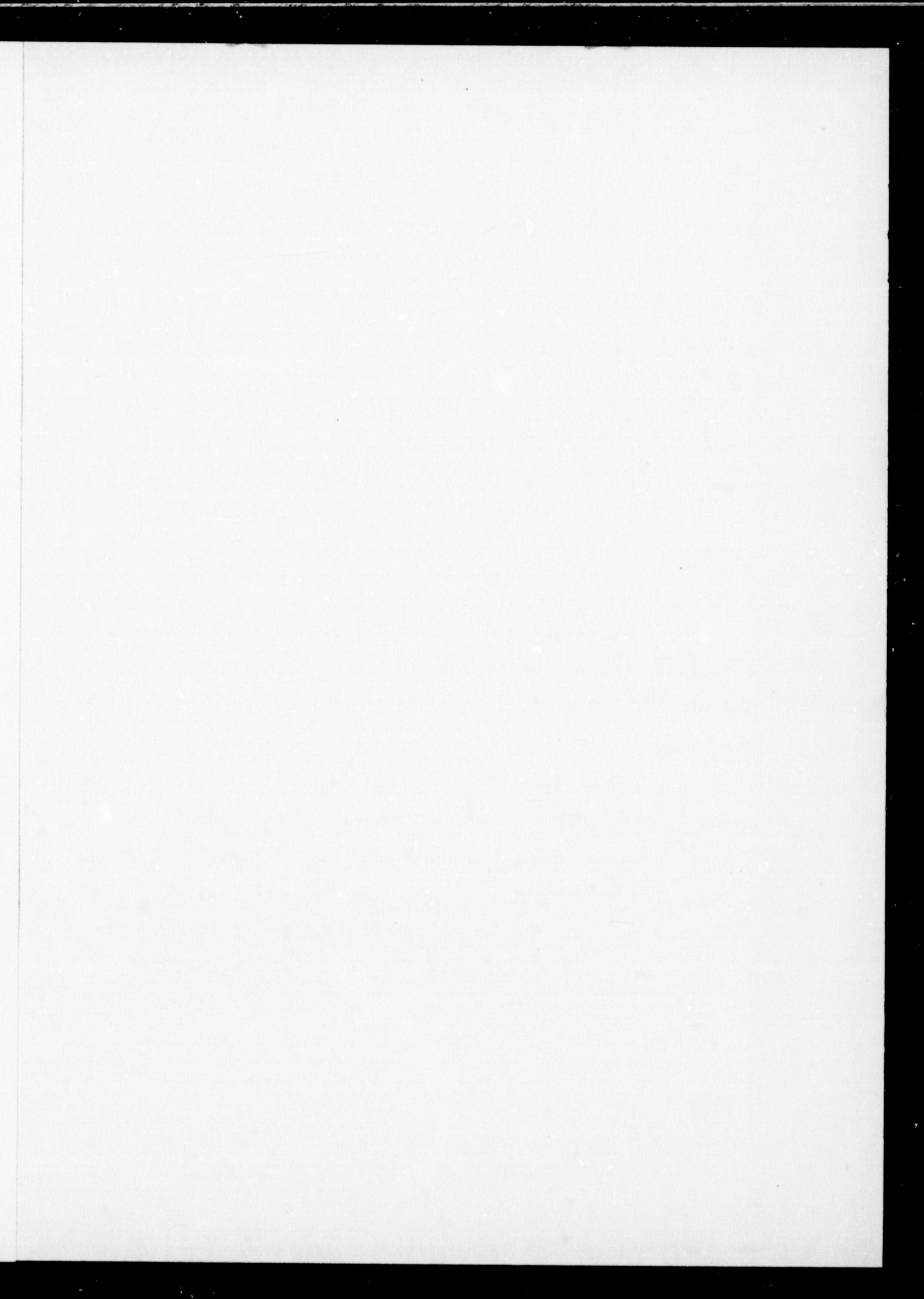
POINT I

THE EVIDENCE WAS INSUFFICIENT AS A MATTER OF LAW TO CONVICT THE APPELLANT TRAMUNTI OF THE CRIME OF CONSPIRACY.

Prior to the submission of the case to the jury, Counsel for the Appellant Tramunti moved for a verdict of acquittal pursuant to Rule 29 of the Federal Rules of Criminal Procedure. The motion was denied. This was error because a reasonable mind could not fairly conclude guilt beyond a reasonable doubt and the judgment of conviction should be reversed and the indictment dismissed. United States v Fantuzzi, 463 F 2d 683 (2d Cir. 1972); United States v Geaney, 417 F 2d 1116 (2d Cir. 1969); United States v Stanton Freeman, (2d Cir. 1974) Docket No. 74-1238 Decided June 7, 1974; United States v Taylor, 464 F 2d 240 (2d Cir. 1972).

The major witness against the Appellant Tramunti was Frank Stasi. Stasi, an admitted dealer in heroin and cocaine, was called as a Government witness and testified that he had been involved in the cutting and distribution of heroin from 1970 through 1972. Stasi testified that he and Joseph Delvecchio, Donato Christiano and Moe Lentini had cut heroin on eight occasions during those years.

Stasi testified that he had known Carmine Tramunti for



two years since he, Stasi, first began to go to the Lo Piccolo Espresso Shop in the Bronx. Tramunti, according to Stasi, ran a card game at the Lo Piccolo and he got a cut out of every pot. The card games were obviously for high stakes since Stasi, who only sat in on a game on one occasion, lost Seven Hundred dollars in that one evening. Stasi testified he never heard the Appellant Tramunti discuss narcotics or "goods" until early in 1973 when he testified he overheard a conversation at the Lo Piccolo Espresso Shop in which Inglese told Tramunti that he expected some "goods" and needed some money. Tramunti made no verbal response, but he did nod his head and hold out his hands. There is, however, no proof that Tramunti knew that "goods" referred to narcotics because the word "goods" did not have a universal meaning as a synonym for narcotics. Indeed Stasi testified that in 1970 when Inglese first approached him at the Beach Rose Social Club about working with narcotics he did not know then that "goods" referred to narcotics. Stasi, on cross-examination, admitted that he had never heard the Appellant use the word "goods", that he had never discussed narcotics with the Appellant and that he never picked up or delivered any narcotics or money for narcotics for the Appellant Tramunti. Moreover, the response made by Tramunti did not signify assent, indeed it was totally ambiguous and fails to show that Tramunti adopted the statement of Inglese's or even knew

what the statement referred to. United States v Fantuzzi, Supra, 463 F 2d at 690.

Stasi goes on to explain that Inglese tells him he wants to see him while Tramunti is still present, but that it is only after Tramunti leaves that Inglese tells him he is expecting a shipment. Several days later, Stasi was told by Inglese that the shipment he expected did not arrive. The statement that the Appellant Tramunti sought to introduce through Albert Casella, involving a conversation on January 15, 1973 between Casella and "Fat" Carmine Miranda went right to the heart of the matter. In that conversation, which was recorded, Carmine Miranda said that two weeks earlier he had spoken to Louis Inglese, his "connection" and Inglese had told him he should look for a new "connection" that he is going out of business for a while. This statement, which clearly contradicts Stasi's testimony, is buttressed by the stipulated testimony that Inglese went to jail on January 19, 1973 to begin serving a four-month sentence. Clearly, it is more likely then that Inglese would be looking to dispose of his stock, if any, and tell his customers to go elsewhere with a jail sentence facing him, rather than looking for additional narcotics as Stasi maintains.

On February 12, 1973 Stasi goes to the Bon Soir Tear Drops, a nightclub in the Bronx, with Carmine Tramunti who says to him "I miss the big guy. Without him, nothing goes

right. You know the Club, there's nothing happening in the Club." Stasi in reply told Tramunti he was going to see Inglese the next day. The following day Stasi sees Inglese at the Manhattan House of Detention for Men and told Inglese that everything was slow and that he had not seen Delvecchio or Christiano. Inglese expressed the wish that something would happen so he could get some money. Stasi told Inglese that he had seen Tramunti and Tramunti had said about the conversation, about the money yes or no, you would know. Inglese replied he did not know what was happening so "Just say no." Stasi testified he returned to Lo Piccolo where he saw Tramunti and told him he had seen Inglese who told him no about the conversation to which Tramunti replied "all right, I guess nothing is happening."

This conversation follows a pattern which Stasi exhibits time and time again of having conversations outside the presence of Tramunti which far exceed anything that Tramunti has said to him or done in Stasi's presence. Stasi was not asked by Tramunti to go and see Inglese and, moreover, Tramunti did not tell Stasi to ask Inglese about the earlier conversation. Indeed, in view of the fact that the first conversation at Lo Piccolo was halted when Stasi approached, it would seem, according to Stasi's testimony, that the parties have so little confidence in Stasi that they

would not later use him as a messenger. Tramunti's initial part of the conversation was that he missed Inglese and that nothing was happening at the Club. Stasi, upon his return, tells Tramunti the answer is "no", but "no" to what. Since there is no testimony that Tramunti asked Stasi to carry a message, Tramunti's statement upon Stasi's return is left hanging in the air, "OK I guess nothing is happening." Moreover, since Inglese says he needs money, there is no explanation of his turning down Tramunti's offer of money, if that's what it was.

Stasi's statements lack the "ring of reliability" that is necessary to give them any value as circumstantial evidence. While Stasi did testify, his testimony about conversations he had with Inglese concerning prior conversations between Tramunti and Inglese, are not based on Stasi's own knowledge. Moreover, it is not at all clear that the conversation in the Manhattan House of Detention between Stasi and Inglese was based on the earlier conversation between Tramunti and Inglese at the Lo Piccolo.

There was a gap of at least one month between the conversation at the jail with Stasi and Inglese, and the conversation at Lo Piccolo. In view of Stasi's testimony that a few days after the conversation at Lo Piccolo Inglese told him that he did not get any narcotics, it seems reasonable



that Inglese, while still at his liberty, would have communicated this information to his expected financier without waiting a month to do so. Moreover, in view of the fact that Tramunti did not send Stasi to Inglese nor give him a message to communicate to Inglese, there is no way of knowing just what, if anything, this second conversation refers to, there just are no indicia of reliability that can attach to this episode. United States v Cirillo, (2d Cir. 1974) slip ops. 676-796 (decided May 7, 1974).(3319-3320).

It cannot be overlooked that although Inglese was a partner in the card game with Tramunti, he was obviously a fast man with a dollar, as witnessed by his constant approaches to Tramunti for money. Thus, Inglese's departure may have resulted in a loss of gambling activity at the Club. Moreover, the absence from the Club of Christiano and Delvecchio indicate at that time that there was no further activity in narcotics because Inglese was in jail and Delvecchio was under Federal indictment.\* Delvecchio was the only individual who ever supplied heroin to Stasi for mixing or cutting. It seems that his arrest, which made him "hot",

---

\* Delvecchio was arrested on September 26th, 1972 and arraigned in the Southern District of New York on Indictment 72 CR. 1072 which was superseded by Indictment 73 CR. 229. Delvecchio subsequently plead guilty to one count in the superseding indictment.

brought Moe Lentini into the picture, but also cut off further supplies of narcotics, and this was in September, 1972.

The attempt to raise bail for Moe Lentini has been portrayed by the Government as proof positive of Tramunti's participation in the conspiracy, but a closer examination of the testimony will show that this episode clearly exhibits Tramunti's non-involvement in the conspiracy charged.

Stasi testifies that when he approaches Tramunti about raising bail for Moe Lentini, Tramunti responds by saying "Well get him out." The words however do not convey a command by Tramunti to Inglese or Stasi to get Lentini out of jail, but rather show that Tramunti does not intend to lift a finger to get Lentini out, that he does not care about Lentini, and that it is strictly up to Inglese to do what he can to get Lentini out of jail. Tramunti does not know the amount of Lentini's bail, nor does he offer to put up either property or cash for collateral, as a matter of fact, he refuses to do anything. Inglese then explains to Stasi that Delvecchio has somebody with property to put up for bail.

The evidence taken as a whole thus falls far short of the proof necessary to make Tramunti a member of any conspiracy. The evidence falls short of proving that he knew of the purposes of the conspiracy or agreed to join the conspiracy. The meeting at the Bon Soir Tear Drops offers no proof of an offer to join any conspiracy and the attempt to have Tramunti

join the effort to raise bail for Lentini can only be described as a failure insofar as gaining Tramunti's participation is concerned.

"There must be some basis for inferring that the defendant knew about the enterprise and intended to participate in it or to make it succeed.

"Mere presence at a site where a narcotics sale has been planned without some showing that the defendant knew of it is not enough to satisfy the fair preponderance test." United States v Cirillo, Supra, pp. 3316, 3322.

It is submitted that not only is the non-hearsay evidence insufficient as a matter of law to make Tramunti a member of a conspiracy by a fair preponderance of the credible evidence, but further, all the evidence, hearsay and non-hearsay, is legally insufficient to make Tramunti a member of any conspiracy by proof beyond a reasonable doubt.

## POINT II

THE COURT ERRED IN DENYING THE APPELLANT'S MOTION FOR A SEVERANCE PURSUANT TO RULES 8(b) AND 14 OF THE FEDERAL RULES OF CRIMINAL PROCEDURE.

The Appellant Tramunti moved, prior to trial, for a severance pursuant to Rule 8(b) of the Federal Rules of Criminal Procedure requiring the Government to elect the Count or Counts upon which it wished to proceed to trial. The motion was denied. The motion for severance was renewed during the course of the trial and again denied. This was error and the judgment of the conviction should be reversed. United States v Kelly, 349 F 2d 720 (2d Cir. 1965); Drew v United States, 331 F 2d 85 (C.A.D.C. 1964); Kotteakos v United States, 328 U. S. 750 (1946).

At the outset of this case the Appellant Tramunti moved for a severance arguing that there had been improper joinder as to the various defendants. In the instant case, one conspiracy was alleged naming thirty-two defendants, of whom sixteen remained in the case through the verdict. At the outset there were thirty Counts in the Indictment with the Appellant Tramunti named in two of those Counts. Count Twenty-Seven, which was the only Count in which the Appellant Tramunti was charged with a substantive crime, was dismissed

at the close of the Government's case with the consent of the Government. Thus, the Appellant Tramunti was charged with and convicted of the one remaining Count, the conspiracy charged in the First Count.

In Kotteakos v United States, Supra, 328 U. S. at 767, the Supreme Court said:

"The burden of defense to a defendant, connected with one or a few of so many distinct transactions, is vastly different not only in preparation for trial, but also in looking out for and securing safeguard against evidence affecting other defendants, to prevent its transference as 'harmless error' or by psychological effect, in spite of instructions for keeping separate transactions separate."

Here the Appellant Tramunti found himself, although a defendant, more and more in the position of a spectator where he sat through a trial lasting nine weeks and all the testimony offered as to him could have, and indeed was, taken in a period of two trial days. The Government contended that Carmine Tramunti joined the conspiracy in January, 1973. He was, however, forced to sit for weeks and weeks while the Government introduced evidence that Vincent Papa and Joseph DiNapoli had a "million" dollars in February, 1972, and while the Government introduced testimony that Frank "Butch" Pugliese had attempted to murder Paul Gregorio in 1971 by shooting him in the head, but missed and shot him in the knee instead. Not only was Tramunti forced to sit while various of his co-defendants

were thus depicted, but he was unable to introduce exculpatory evidence as to himself because of the objection of a co-defendant.

In the course of the testimony of Albert Cassella, a New York City Police Officer, an examination of his 3500 material indicated that on January 15, 1973 he had a conversation with "Fat" Carmine Miranda who told him that he had spoken to the co-defendant Louis Inglese two weeks earlier and Inglese had told him to find a new "connection", that he was going out of business for a while. Appellant's counsel indicated to the Court that he wished to bring out this conversation on cross-examination after the Government, which had earlier indicated it was going to elicit this information on direct examination, changed its position because of its failure to list Carmine Miranda as a co-conspirator.\* Attempts by Appellant's counsel to subpoena Carmine Miranda were unsuccessful.

This conversation was important to Tramunti because it directly contradicted Stasi's testimony that in January, 1973 Inglese was expecting a shipment of narcotics. Moreover, not only was the Carmine Miranda statement concerning his earlier conversation with Inglese admissible [United States v Puco, 476 F 2d 1099, 1107 (2d Cir. 1973), United States v D'Amato, 493 F 2d 359, 365 (2d Cir. 1974)], but the conversation of January 15th was on tape, so the jury could have

---

\* It would appear however that even though the Government failed to list Carmine Miranda as a co-conspirator, this would not preclude the taking of testimony on this point. United States v Annunziato, 293 F 2d 373, 378 (2d Cir. 1961).

heard the vocal tone and inflections of the speakers and given the conversation the weight they believed it deserved. This conversation would have been corroborated had it been admitted, by the stipulated testimony that Inglese started to serve a four-month jail sentence on January 19, 1973 and, therefore, would hardly have been looking to make any purchases of narcotics because he was going to prison and that was the reason for telling his customers to look elsewhere for their supplies. Thus, not only did the Appellant suffer because of the damning testimony received against others, but he was also precluded from presenting a portion, a vital portion of his defense. United States v Kelly, Supra, 349 F 2d at 759.

Objections were made and denied and motions to sever were also denied repeatedly throughout the trial as the evidence against others came in and again as the Appellant was precluded from presenting his own case.

Mr. Justice Jackson, in his concurring opinion in Krulewitch v United States, 336 U. S. 440, 454 (1949) wrote:

"A co-defendant in a conspiracy trial occupies an uneasy seat. There generally will be evidence of wrongdoing by somebody. It is difficult for the individual to make his own case stand on its own merits in the minds of jurors who are ready to believe that birds of a feather are flocked together."

The strength of the Government's case varied with each

individual defendant, but as to the Appellant Tramunti, the Government's case can only be described as weak, and thus the refusal of the Trial Court to order a severance under either Rules Eight or Fourteen of the Federal Rules of Criminal Procedure as to the Appellant, was so prejudicial as to require reversal of the judgment of conviction.

POINT III

THE COURT ERRED IN FAILING TO CHARGE THE JURY, AS REQUESTED, ON THE KNOWLEDGE OF THE PURPOSE OF THE CONSPIRACY.

Prior to the submission of the case to the jury, counsel for the Appellant Tramunti requested the Court to give the following charge to the jury:

- " In considering whether an individual defendant was a member of the conspiracy charged in Count One, you must first determine if an individual was aware of the purposes of the conspiracy, and if he joined the conspiracy knowing of it's purposes and with the intent to advance it's interests.
- " In considering the evidence insofar as it concerns the defendant Tramunti, you must consider whether the word "goods" was used in a conversation to which he was a party and, if you find the word "goods" was used, you must then consider if there is evidence to prove that the defendant Tramunti knew that the word "goods" referred to narcotics.
- " If you have a reasonable doubt either that

the word "goods" was used or if you have a reasonable doubt that the evidence proves that the defendant Tramunti understood the word "goods" to refer to narcotics, you must acquit him on the charge of conspiracy."

This request to charge was denied by the Trial Court and this was error. Ingram v United States, 360 U. S. 672 (1959); United States v Gallishaw, 428 F 2d 760 (2d Cir. 1970); United States v Christmann, 298 F 2d 651 (2d Cir. 1962); United States v Zapata, (5th Cir. 1974 Docket No. 73-3350, Decided July 17, 1974).

One of the principal issues with which the defense of the Appellant Tramunti concerned itself was the lack of knowledge of the Appellant Tramunti of the purpose for which Louis Inglese was seeking money. Frank Stasi had testified on direct examination that Inglese had told Tramunti he was expecting "goods" and he needed money. Moreover, Stasi had testified that "goods" referred to narcotics. On cross-examination, great stress was laid upon Stasi's earlier statements to his interrogators that Inglese had said he was expecting "something", and that the word "goods" had not been used. On re-direct the Government considered the area one of sufficient importance to ask Stasi for an explanation of his earlier

pre-trial statements. The lines were then clearly drawn as to the importance both sides attached to the question of knowledge and to the great stress placed upon the word "goods".

Certainly, one of the crucial issues that the Government was faced with was in proving Tramunti's knowledge of the objectives or purposes of the conspiracy and that is the reason that both the Federal Government, as Prosecutor, and the New York City Police Department, as the interrogator of Stasi, laid great stress upon the use of the word "goods" rather than the use of the word "something". Stasi, at one point during his pre-trial interrogation, when pressed on the question of whether Tramunti had knowledge about narcotics dealing, told his interrogators he had no such knowledge of Tramunti's activities, but that he was willing to lie about it (539-541). The issue on the question of whether the word "goods" or "something" was used became even more crucial by the absence of any proof, as the Government conceded in summation, that Tramunti had ever handled any narcotics, nor had the Government ever shown that Tramunti had turned over any money to any individual for any purpose during the course of the entire trial.

In summation it was the Government's summation that muddled the issue because the Prosecutor sought to erase any distinction between the word "goods" and the word "something" and sought to convince the jury that both words stood for

narcotics when he told the jury:

" And I submit to you, ladies and gentlemen, even if he said "something", even if he didn't say "goods", that is very important. Perhaps not that one conversation, but, please, again, the whole record. He said "goods".

The attempt by the Government to erase the distinction between "goods" and "something" can not be minimized because it was of crucial importance to the Appellant's defense especially in light of testimony that Inglese and Tramunti were partners in a card game and they used to split the money that came out of that game. Thus, although the card game was illegal under State law, the "something" referred to by Stasi in his pre-trial interrogation may well have referred to activity surrounding that game and not narcotics (706).

In it's charge, the Court told the jury that "goods" was a code name for narcotics and that it's use was evidence of the knowledge of the unlawful purpose of the transaction, but it merely mentioned Stasi's admission that in pre-trial meetings with the New York City Police Department Stasi told them that Inglese had used the word "something".

The importance of the refusal of the Trial Court to give the requested instruction cannot be overlooked because of the very weak case presented against the Appellant Tramunti by

the Prosecution. The Second Circuit pointed out in United States v Borelli, 336 F 2d 376, 385 (2d Cir. 1964):

"In order for a man to be held for joining others in a conspiracy, he must in some sense promote their venture himself, make it his own, . . . it becomes essential to determine just what he is promoting and making his own."

In this case it was necessary to have the jury make the determination as to which word was used in order to have the jury properly assess what knowledge, if any, Tramunti possessed concerning the purposes to which Inglese desired to put the money. It cannot be overlooked that Stasi himself, when first approached by Inglese to cut heroin, did not know that "goods" referred to heroin, and the record is devoid of any testimony showing that the Appellant Tramunti ever had any conversations referring to heroin, narcotics or "goods" prior to the conversation in Lo Piccolo with Inglese. Moreover, Tramunti's shying away from any involvement in raising bail for the co-defendant Lentini, when he may have been aware of the reason for Inglese's desire to free Lentini, again highlights the vast importance that was placed, indeed had to be placed, on Tramunti's understanding of the purpose for which Inglese wanted money. The Court's failure to charge as requested was error for it failed to bring home to the jury the fact that they had to determine the exact agreement, if any, into which Tramunti had entered.

POINT IV

THE COURT ERRED IN FAILING TO INSTRUCT  
THE JURY, AS REQUESTED, THAT A WITNESS'  
EXPLANATION FOR HIS PRIOR INCONSISTENT  
STATEMENTS IS NOT EVIDENCE OF THE TRUTH  
CONTAINED THEREIN.

The Government, on re-direct examination, sought to elicit from Frank Stasi, its key witness against the Appellant Tramunti, an explanation as to why he initially told the Police that Inglese told Tramunti he was expecting "something" rather than "goods". Specifically, Stasi was asked:

"Q. What was your reason for telling the  
detectives that he only used the word  
"something."

Over objection, Stasi made the following reply:

"A. I was afraid of Carmine Tramunti at the  
time (885)."

A motion for the withdrawal of a juror and a severance was made and denied. Prior to the submission of the case to the jury, however, a request was made by the Appellant's counsel that the Court instruct the panel that the witness' explanation of his prior inconsistent statements was not evidence. The request was denied and this was error. The judgment of conviction should be reversed. United States v

Franzese, 392 F 2d 954 (2d Cir. 1968); United States v Berger, 433 F 2d 680 (2d Cir. 1970); United States v Cirillo, 468 F 2d 1233 (2d Cir. 1972).

Counsel for the Appellant Tramunti submitted the following request to charge:

"The testimony of the Government witness Frank Stasi as to his reason for not telling the Police all that he knew about this case when they interviewed him after he had agreed to cooperate with them is not received for the truth of what was said by the witness, but solely on the issue of his credibility. The witness on cross-examination was asked certain questions as to statements which he had earlier made to the Police.

" I permitted the Government on re-direct to explore that issue solely on the question of the witness' credibility.

"What the witness said is not evidence as to the truth of what was said, but it is evidence pertaining solely to the witness' state of mind and it will be up to you and you alone to determine the credibility of the witness and the weight that you will

give to his testimony."

The requested charge was set forth in almost the identical language which the Second Circuit approved in United States v Berger, Supra, 433 F 2d at 683, 684. Moreover, the Berger case was set forth in the request as one of the two supporting citations.

There is no question but that Stasi was cross-examined at length concerning his prior inconsistent statement in an attempt to impeach his testimony. The efforts by the Government to rehabilitate Stasi as a witness, however, served to deprive the Appellant Tramunti of a fair trial. The case against the Appellant Tramunti was a weak one and rested exclusively on the testimony of Frank Stasi. Stasi's alleged fear of Tramunti, in the absence of any limiting instruction by the Court, served to introduce before the jury, by inference, testimony of criminal conduct by the Appellant Tramunti, aside from that alleged in the Indictment.

The question of Stasi's fear of the Appellant was introduced, and indeed could only be introduced on the question of the witness' state of mind. The testimony complained of was prejudicial because it was designed to deal only with the state of mind of a witness, yet it was made to appear, and did appear, in the absence of a limiting instruction, that it referred to the illegal conduct of the Appellant in obstructing

Justice, and thus showing a consciousness of guilt. The purpose in giving a limiting instruction is not only to focus the attention of the jury, but moreover, serves to indicate that the witness' state of mind need not in any way be associated with the actions of a given defendant or the issues on trial.

The explanation by Stasi for his prior inconsistent statements should only have been received if accompanied by the requested limiting instruction. The Court's refusal to give the proper instruction was error.

POINT V

THE COURT ERRED IN DENYING APPELLANT'S  
MOTION TO STRIKE OVERT ACTS FIFTEEN,  
SIXTEEN AND SEVENTEEN FROM THE INDICTMENT.

Prior to the submission of the case to the jury, the Appellant moved to strike Overt Acts Fifteen, Sixteen and Seventeen from the Indictment. The motion was denied. This was error and the judgment of conviction should be reversed. Cramer v United States, 137 F 2d 888, 893 (2d Cir. 1943); Nash v United States, 229 U. S. 373, 379, 380 (1913); United States v Sarno, 456 F 2d 875 (1st Cir. 1972).

The Indictment listed Overt Act number Fifteen as being:

"In or about January, 1973 defendants Carmine Tramunti and Louis Inglese had a conversation at Lo Piccolo, 3044 Westchester Avenue, Bronx, New York."

It was this conversation the Government contended that put Appellant Tramunti into the conspiracy by agreeing to provide Inglese with money to purchase narcotics. The Appellant contended that the agreement itself could not be an overt act. The law required that there be an agreement and an overt act to prove that the agreement has passed beyond words. Yates v United States, 354 U. S. 298, 334 (1957);

Hyde v United States, 225 U. S. 347, 388 (1912) (Dissenting opinion J. Holmes). The state of the law is clear that the agreement itself cannot be an overt act and the First Circuit so held in United States v Sarno, Supra, 456 F 2d at 877.

The Indictment listed Overt Act Sixteen as being:

"On or about May 30, 1973 defendant Vincent D'Amico went to the Centaur Restaurant, 342 East 46th Street, New York, New York."

This overt act is legally insufficient to be in furtherance of the conspiracy in Count One because the activity which is set forth therein involves activities of Frank Stasi which are entirely outside of anything he does in connection with or for Louis Inglese.

The heroin and cocaine that Stasi supplied to D'Amico came from George Toutoian and Moe Lentini. There is no contention made that it came originally from Louis Inglese or Vincent Papa. Moreover, the record is clear that Stasi did his best to keep his transactions with D'Amico a secret from Inglese because Inglese had told him that if he found he was "fooling around" he could not use him. Without question then, Stasi's deals with D'Amico were clearly outside the scope of any conspiratorial agreement, and indeed were undertaken by him in express violation of that agreement. Thus, Overt Act Fifteen could not be, and evidence on this point was uncontroverted, undertaken in furtherance of the

conspiracy.

Overt Act Seventeen charged that:

"On or about May 30th, 1973, the defendant Thomas Lentini delivered a quantity of cocaine to defendant Dominick Lessa."

The cocaine that Lentini delivered to Lessa was obtained by Lentini from Jack Spada via Frank Stasi. The record is clear that Lentini set up the deal whereby Stasi got the cocaine from Spada. Inglese had no prior knowledge of the deal and only came to learn about it because he was at the place designated for the transfer by Lentini by coincidence, and Stasi was an hour late. The cocaine belonged to both Lentini and Stasi, not to Inglese. Inglese was opposed to Stasi dealing on his own, so this Overt Act too cannot be in furtherance of the conspiracy because it was beyond and outside their conspiratorial agreement.

While the Court did charge the jury as to the possibility of their being multiple conspiracies, the jury by their verdict, convicting fifteen defendants on all Counts and unable to reach a verdict as to only one, found that there was only one conspiracy. However, the three Overt Acts complained of, Fifteen, Sixteen and Seventeen, were not connected to, nor in furtherance of, the conspiracy charged in Count One and thus they cannot support a conviction for conspiracy. United States v Driscoll, 449 F 2d 894, 898 (1st Cir. 1971). The jury returned

a general verdict and may well have rested it's verdict on a legally insufficient Overt Act, thus the verdict cannot stand. Grunewald v United States, 353 U. S. 391, 414 (1957). The judgment of conviction should be reversed.

#### POINT VI

THE CONDUCT AND SUMMATION OF THE UNITED STATES ATTORNEY DURING THE TRIAL CONSTITUTE PROSECUTORIAL MISCONDUCT WHICH DENIED APPELLANT A FAIR TRIAL.

During it's re-direct examination of Frank Stasi, the Government questioned him about his difficulty with remembering dates, months and years. Stasi explained that when he was interviewed by a Federal Agent Torrey Shutes, Shutes and Police Sergeant O'Boyle would give him dates when various "mixing sessions" took place which he adopted as being the truth simply because he could not remember the dates in his appearance before the Grand Jury. Stasi, according to his testimony on re-direct, only realized that those dates were wrong when he discussed it prior to trial with the Prosecutor who was conducting the re-direct examination.\*

Counsel for the defense laid great emphasis upon Stasi's professed inability to remember dates and the inconsistency between the dates given before the Grand Jury and in pre-trial interrogation with those given at the trial. The

---

\* This leaves one to guess at the Government's motivation in leaving Count Twenty-Seven, which charged the Appellant Tramunti with the substantive crime of possession in May, 1973, in the Indictment after they knew that none of the defendants named in the Count possessed narcotics in 1973 according to Stasi.

Government by its re-direct examination sought to inject its own credibility into that of Stasi's by making it appear that the dates given on trial by Stasi were correct because they were made after consulting with an Assistant United States Attorney. This was error. United States v Puco, 436 F 2d 761, 762 (2d Cir. 1971).

In summation, the earlier prejudice was compounded when the United States Attorney for the Southern District told the jury:

"But in deciding this case, we would like you to try us, the Government. In fact we urge you to try us. Try us with a careful review of all the facts that are before you; before you in evidence on the record, in pictures, in documents, on tapes. When you do this we submit you will find that the Government and it's witnesses have been entirely candid and truthful." (5031).

At the closing point in his summation, the United States Attorney told the jury:

"Well, ladies and gentlemen, as the United States Attorney for this district I have a great obligation too and esteem for my client. My client is the United States. I want to leave you with the knowledge that that obligation is one to which I am firmly committed.

"Ladies and gentlemen, we have an obli-

gation to Justice. That is my obligation, it is Mr. Phillips', Mr. Fortuin's, Mr. Engel's, in this case and in every case." (5140).

Thus, the Government closed it's summation by buttressing that element of it's case that was weakest, the credibility of it's major witnesses, by infusing it's credibility with theirs.

The Government on summation, moreover, sought to have the jury believe that the Trial Judge vouched for the credibility of the Government's witnesses when it explained to the jury the following:

"Dawson was promised -- he was promised something, yes -- he was promised that the Government would stand up for him if, and only if, he told the truth and to assume that Tennessee Dawson can help himself by committing perjury before you in this case is to assume that Judge Duffy, who heard and saw him testify, will reward Tennessee Dawson for lying to convict innocent people." (5049)

Thus, the Prosecutor came right out and told the jury that the Government was going to help this witness because he told the truth, and that he told the truth because the Trial Court had heard his testimony and, in fact, had passed upon it. The Judge was thus placed, by the Prosecutor's summation, in the position of having already passed upon the

credibility of this witness and presumably the other Government witnesses as well. Objections were taken to these portions of the Government's summation as well as others.

The strength of the Prosecution's case varied, as it often does, from defendant to defendant. While as to some defendants, where proof of guilt was overwhelming, the comment set forth by the Prosecutor would not warrant reversal. Such would not be the case, however, as against the Appellant Tramunti, where the case was weak and the remarks of the Prosecutor clearly were improper, and sufficiently prejudicial to warrant reversal.

It may well be, and undoubtedly will be, argued by the Prosecutor that the remarks complained of were the natural result of the give and take of summation. An examination of the record will reveal, however, the great lengths to which the Government went to use its own position as sovereign to cloak the drab appearance of its own witness, and the ability of the Prosecutor to take umbrage at either statements never uttered or uttered but directed elsewhere. The remarks complained of were prejudicial and that harm was done can not be doubted. United States v Bivona, 487 F 2d 443 (2d Cir. 1973); United States v Drummond, 481 F 2d 62 (2d Cir. 1973); United States v White, 486 F 2d 204 (2d Cir. 1973); United States v Grunberger, 431 F 2d 1062, 1068, 1069 (2d Cir. 1970).

POINT VII

PURSUANT TO RULE 28(i) OF THE FEDERAL RULES OF APPELLATE PROCEDURE, APPELLANT TRAMUNTI HEREBY ADOPTS BY REFERENCE THE POINTS AND ARGUMENTS OF THE OTHER APPELLANTS INsofar AS THEY MAY HAVE APPLICATION TO THE APPELLANT TRAMUNTI.

CONCLUSION

FOR THE ABOVE STATED REASONS, THE JUDGMENT BELOW SHOULD BE REVERSED AND THE CASE REMANDED TO THE DISTRICT COURT WITH A DIRECTION THAT THE INDICTMENT BE DISMISSED AS TO THE APPELLANT, OR, IN THE ALTERNATIVE, THAT THE APPELLANT BE GRANTED A NEW TRIAL.

Respectfully submitted,

HERBERT S. SIEGAL, ESQ.  
17 John Street  
New York, New York 10038  
Attorney for Appellant

Of Counsel

GILBERT EPSTEIN, ESQ.

## U.S. COURT OF APPEALS:2ND CIRCUIT

UNITED STATES OF AMERICA

Appellee,

against

CARMINE TRAMONTI,

Appellant,

Index No.

Affidavit of Service by Mail

STATE OF NEW YORK, COUNTY OF NEW YORK

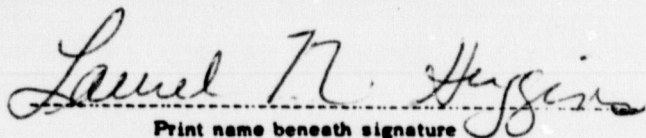
SS.:

I, Laurel N. Huggins,

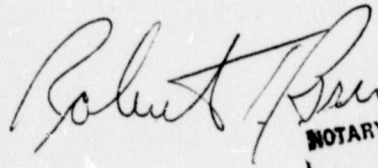
being duly sworn,

deposes and says that deponent is not a party to the action, is over 18 years of age and resides at

1050 Carroil Place, Bronx, New York

That upon the 3rd day of September 1974, deponent served the annexed ~~Appellant's~~ Appellant's Briefupon Paul J. Curran, United States Attorney attorney(s) for  
in this action, at ~~Frank~~ /Foley Street Square, New Yorkthe address designated by said attorney(s) for that  
purpose by depositing <sup>2</sup> true copy of same, enclosed in a postpaid properly addressed wrapper in a  
Post Office Official Depository under the exclusive care and custody of the United States Post Of-  
fice Department, within the State of New York.Sworn to before me, this 3rd  
day of September 19 74  
Print name beneath signature

LAUREL N. HUGGINS

  
ROBERT T. DRIN  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 31 - 0418950  
QUALIFIED IN NEW YORK COUNTY  
COMMISSION EXPIRES MARCH 30, 1975

